

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

IN THE MATTER OF:

Mimi & D, LLC t/a Vita
Restaurant and Lounge/ Protest
Penthouse Nine Hearing
1318 9th Street, NW
Retailer CT - ANC-2F
License No. 86037
Case# 13-PRO-00154

(Application to Renew
the License)

June 18, 2014

The Alcoholic Beverage Control
Board met in the Alcoholic Beverage Control
Hearing Room, Reeves Building, 2000 14th
Street, N.W., Suite 400S, Washington, D.C.
20009, Chairperson Ruthanne Miller,
presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
DONALD BROOKS, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
JAMES SHORT, Member

ALSO PRESENT:

KOFI APRAKU, ABRA Investigator

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(1:57 p.m.)

CHAIRPERSON MILLER: Okay. Good afternoon. Sorry to keep you all waiting. All right. So we are here for a Protest Hearing. I'm calling Case No. 13-PRO-00154 and that's Vita Restaurant and Lounge/Penthouse Nine located at 1318 9th Street, N.W., License No. 86037, in ANC-2F.

And it is with respect to renewing the license.

Why don't we start with introductions for the record, please? On our right?

MR. HIBEY: Good afternoon. I'm Mike Hibey and I represent the licensee.

CHAIRPERSON MILLER: Okay.

MS. BEYENE: Abeba Beyene, the owner of Vita Restaurant and Lounge.

CHAIRPERSON MILLER: Okay. And over here?

MR. DANILOVICS: George

1 Danilovics. I'm a member of Smith Group and
2 I'll be leading the question and answers for
3 us.

4 MR. SMITH: And Martin --

5 CHAIRPERSON MILLER: I'm sorry,
6 could you --

7 MR. DANILOVICS: George
8 Danilovics.

9 CHAIRPERSON MILLER: What's your
10 last name?

11 MR. DANILOVICS: Danilovics.

12 CHAIRPERSON MILLER: Danilovics?

13 MR. DANILOVICS: Yes.

14 CHAIRPERSON MILLER: Okay. And
15 you represent the Smith Group?

16 MR. DANILOVICS: I'm part of Smith
17 Group.

18 CHAIRPERSON MILLER: Okay.

19 MR. SMITH: And my name is Martin
20 Smith, also representing Smith Group.

21 CHAIRPERSON MILLER: Okay. What
22 is the Smith Group?

1 MR. SMITH: Smith Group is a group
2 of neighbors that have protested the license.

3 CHAIRPERSON MILLER: Okay.

4 MR. SMITH: The ANC had also
5 protested the license and will be signing off
6 on whatever voluntary agreement the Smith
7 Group reaches here.

8 CHAIRPERSON MILLER: Right. Okay.
9 So there are seven in the group though, is
10 that correct?

11 MR. SMITH: Total, yes.

12 CHAIRPERSON MILLER: Okay. Okay.
13 So do you have any preliminary matters to
14 bring to my attention, our attention?
15 Otherwise, let me just ask you about are you
16 going to have any witnesses?

17 MR. HIBEY: We have one witness.

18 CHAIRPERSON MILLER: One witness.
19 The party?

20 MR. HIBEY: Yes.

21 CHAIRPERSON MILLER: Okay. And
22 you all? I know I have your PIFs here, but --

1 MR. DANILOVICS: Just two.

2 CHAIRPERSON MILLER: Two. The two
3 of you?

4 MR. DANILOVICS: Yes.

5 CHAIRPERSON MILLER: Okay.

6 MR. DANILOVICS: And Martin will
7 question me when I'm up there.

8 CHAIRPERSON MILLER: Okay. Good.
9 And are you familiar with this hearing
10 process, Protest Hearing process, either of
11 you?

12 MR. DANILOVICS: Yes.

13 CHAIRPERSON MILLER: Are you?

14 MR. SMITH: Generally familiar,
15 but if there is any type of guidelines or
16 overview --

17 CHAIRPERSON MILLER: Okay.

18 MR. SMITH: -- you would like to
19 go over, I would welcome that information.

20 CHAIRPERSON MILLER: Okay. Let me
21 just first of all start with time guidelines.
22 It's an hour and a half maximum per party and

1 certainly not, you know, necessary to go to
2 the max, but that's the max and that includes
3 your witness' testimony and it includes your
4 direct examination of your witness and your
5 cross-examination of the other party's
6 witness.

7 Okay. So while the other party is
8 crossing your witness, the time isn't being
9 used against you. Okay. And then you will
10 have five minutes for an opening statement,
11 should you want to make one. And five minutes
12 for closing and that's not counted in your
13 hour and a half.

14 And the order of procedure is the
15 applicant makes an opening statement or the
16 licensee, whatever, and then the protestant
17 and then we call our Investigator as the first
18 witness, that's the Board's witness.

19 And the Board may ask questions of
20 our Investigator and then we will turn to you
21 all and our process is the licensee goes first
22 and then the protestant.

1 And then when you put on your
2 witnesses, we have opposing party cross-
3 examining first before the Board. And then
4 the Board will ask questions and then we go
5 back to the parties, in the event they have
6 any questions based on the Board's questions.

7 Okay. So basically, opening
8 statements, Investigator, applicant,
9 protestant, closing. Okay.

10 MR. DANILOVICS: Sounds good.

11 CHAIRPERSON MILLER: So I don't
12 think I forgot anything basically. And if you
13 have any questions along the way, feel free to
14 ask me. Okay.

15 All right. Then I think we will
16 start. If we run into anything, we will deal
17 with it then.

18 Oh, exhibits, that's the other
19 thing. Right. If you have any exhibits, you
20 present them in your case in chief usually and
21 when you are ready to ask the Board to admit
22 anything, the other side can object and if we

1 object, they hear the objections.

2 We look to the Rules of Civil
3 Procedure and Evidence, but we are not bound
4 by them. Okay. It's not quite as strict.

5 All right. I think we can start
6 then unless you have any questions? Okay. So
7 do you have an opening statement?

8 MR. HIBEY: Sure.

9 CHAIRPERSON MILLER: Okay.

10 MR. HIBEY: Good afternoon. We
11 are here for the renewal of a liquor license
12 for Vita Lounge. And what we want to focus on
13 is the standard that the Board should consider
14 and that's the appropriateness of this license
15 for the neighborhood it's located in.

16 This business owner, this owner
17 opened this business about three years ago.
18 And it was her first business, the first time
19 owning a bar/restaurant and she had taken over
20 a property that a previous bar and restaurant
21 had been in. And when she took it over, it
22 had 34 speakers and it had been basically a

1 bar/restaurant.

2 And at the outset, she ran it with
3 the 34 speakers and had no idea that that was
4 going to be problematic. And she had some
5 complaints and she had some issues at the
6 beginning.

7 Since then, she has made many
8 changes to her business. She has disconnected
9 half the speakers in the business. She has
10 taken other steps to reduce any sound and
11 noise coming from her business. Those other
12 steps include putting a limiter on the sound
13 system, sealing the back door. You know, she
14 has been very proactive, you know, trying to
15 meet the requests of neighbors who had those
16 complaints initially.

17 And in the last year, year and a
18 half, she has improved. She has been much
19 better and the protestants would easily agree
20 with that, I think. So what we are here now
21 for is a protest that we believe stems
22 somewhat from those earlier times that she has

1 stepped away from and improved on.

2 And she is willing to do just
3 about anything to appease the neighbors and to
4 make sure that her business is appropriate.
5 She has already taken many steps to do that
6 and she is willing to go further if need be,
7 but what she cannot do is give away an hour of
8 her business operations and that's what the
9 protestants want.

10 They want her to reduce her hours
11 of operation by one hour weekdays and
12 weekends. So instead of closing at 2:00 and
13 3:00 on weekdays and weekends, it would be
14 closing at 1:00 and 2:00. And she can't agree
15 to that. She can't do that. It would hurt
16 her business by killing off an hour.

17 It also would remove her from what
18 all the other businesses like her, both near
19 her and throughout the city pretty much have.
20 So we are willing to do just about anything to
21 make sure that we are a good neighbor and that
22 we are not having sound problems. But we

1 cannot give away an hour because the
2 protestants want an hour reduced for,
3 basically, all of the bars in the area, in
4 their neighborhood and area.

5 We can't be a part of setting some
6 new precedent for establishing a new
7 legislation through this Protest Hearing. So
8 we would like to focus on the issues, you
9 know, our impact on the neighborhood, and we
10 think we are doing a good job in the past year
11 and a half or so and we would like to focus on
12 if there is anything else we can do go improve
13 that, but we do not want to agree -- we would
14 agree to almost anything they ask for, but we
15 cannot reduce our business operations by an
16 hour.

17 CHAIRPERSON MILLER: Okay. Thank
18 you.

19 MR. DANILOVICS: Good afternoon,
20 Members of the Board. We also will focus on
21 the appropriateness of a tavern license with
22 entertainment endorsement to operate in a

1 mixed residential neighborhood.

2 The neighborhood has dramatically
3 changed over the past few years since the
4 original tavern with entertainment endorsement
5 license was given to FN/BE BAR which later was
6 assumed by the current occupant, Ms. Beyene.

7 The tavern plus entertainment
8 endorsement license in that facility is not
9 appropriate because the facility does not have
10 adequate sound protection. It does not have
11 adequate electronics to control the volume and
12 to prevent overrides.

13 The facility -- or excuse me. The
14 neighbors are asking for reduced hours that
15 are consistent with voluntary agreements that
16 are signed by other taverns and taverns with
17 an entertainment endorsement that have been
18 signed in the neighborhood.

19 Other taverns and taverns with
20 entertainment endorsements have signed this
21 template settlement agreement. Another tavern
22 has recently renewed with similar terms

1 without protesting from either the applicant
2 or neighbors.

3 The neighborhood also has
4 concerns --

5 CHAIRPERSON MILLER: Okay. I hope
6 I don't interrupt your chain of thought too
7 much.

8 MR. DANILOVICS: Right.

9 CHAIRPERSON MILLER: But I just
10 want to tell you something that I should have
11 said before. Okay. So, Mr. Hibey --

12 MR. DANILOVICS: Yes.

13 CHAIRPERSON MILLER: -- he is an
14 attorney. Okay. So his whole -- what he
15 said, it's not evidence. He was stating what
16 he is going to show, because he is not
17 testifying. And I just want to make sure that
18 you don't think you are testifying now,
19 because I know you are going to testify.

20 MR. DANILOVICS: Sure.

21 CHAIRPERSON MILLER: Okay. But
22 this is about what we are going to hear.

1 Okay. Good. Thank you.

2 MR. DANILOVICS: That is the story
3 we are going to --

4 CHAIRPERSON MILLER: Right. It's
5 the story you are going to tell. Okay.

6 MR. DANILOVICS: Yes. And the
7 neighbors request, within the settlement
8 agreement template that other tavern licenses
9 have agreed to, a 30 minute prior to closing
10 end of last call. This is shown both in our
11 neighborhood and in Barracks Row to allow
12 folks who are in these establishments to leave
13 in an orderly fashion without causing
14 disruption to the neighborhood.

15 An establishment such as Vita
16 Lounge that has the capacity to hold a lot of
17 people needs a plan to get those people out
18 without disturbing the neighborhood. And
19 those are the areas we will focus on for the
20 appropriateness for this license.

21 CHAIRPERSON MILLER: Okay. Good.
22 Thank you. All right. Mr. Apraku, good

1 afternoon.

2 Whereupon,

3 INVESTIGATOR KOFI APRAKU

4 was called as a witness by the ABRA Board, and

5 having been first duly sworn, assumed the

6 witness stand and was examined and testified

7 as follows:

8 INVESTIGATOR APRAKU: I do.

9 CHAIRPERSON MILLER: Okay. Thank
10 you.

11 INVESTIGATOR APRAKU: Thank you.

12 CHAIRPERSON MILLER: So whenever
13 you are ready, if you want to give highlights
14 of your report and also if you could touch
15 upon, in particular, the areas that they
16 mentioned?

17 INVESTIGATOR APRAKU: Absolutely.

18 CHAIRPERSON MILLER: Okay. Great.

19 DIRECT EXAMINATION

20 INVESTIGATOR APRAKU: I'm

21 Investigator Kofi Apraku, that's spelled A-P-

22 R-A-K-U. I was assigned the protest

1 investigation for Mimi & D, LLC t/a Vita
2 Lounge and Restaurant/Penthouse Nine. It is
3 the intent of Vita Lounge/Penthouse Nine to
4 renew its current tavern license.

5 The renewal application is being
6 protested by a group of five or more
7 represented by Mr. Martin Smith.

8 The protest issues were stated as
9 peace, order and quiet and real property
10 values.

11 On Friday, March 14, 2014, I
12 interviewed Mr. Martin Smith, representative
13 for the group of five. Mr. Smith stated the
14 following in regards to the protest issues:
15 That the establishment has represented a
16 considerable problem to the surrounding
17 community and residents. He also mentioned
18 the fact that there was a stabbing at the
19 establishment in 2011.

20 He stated that the community has
21 had constant noise complaints regarding the
22 establishment in regards to the loud music

1 emanating from it.

2 He stated that there is a resident
3 on the second floor of the -- that there is a
4 resident who shares a wall with the bar on the
5 second floor of the establishment and that the
6 music coming from the establishment can be
7 heard clearly inside his home.

8 He stated that Vita Lounge and
9 Restaurant operates as a de facto nightclub
10 even though it has a tavern license. He
11 stated that the establishment has improved
12 somewhat, but more can be done. And he ended
13 it by stating that the protestants prefer the
14 establishment no longer offers entertainment
15 and additionally close an hour early on
16 weekends. Thank you.

17 On Friday, March 21, 2014, I
18 visited Vita Lounge and Restaurant and spoke
19 with Abeba Beyene, the applicant, in regards
20 to the protest issues.

21 She stated that she has tried to
22 work with the community regarding concerns

1 with noise. She said she has disconnected
2 several speakers on the first and second floor
3 of the establishment in order to mitigate loud
4 noise emanating into the community.

5 She stated that she understands
6 that there is a resident that she said she
7 shares a wall with and would be willing to
8 soundproof the shared wall, if necessary. She
9 stated that she has been the subject of Noise
10 Task Force enforcement activities several
11 times and has not received a warning or
12 violation.

13 She stated that closing her
14 establishment an hour early than she is
15 allowed to currently would be detrimental to
16 her business. She did, however, state that in
17 addition to providing that soundproofing, she
18 would be willing to have last call for
19 alcoholic beverages at 2:30 a.m. on the
20 weekends.

21 Vita Lounge and Restaurant is
22 located in the C-2-A Zone. There are 20

1 licensed-ABC establishments operating within
2 1,200 feet of the establishment. The
3 Scripture Cathedral, which provides day care,
4 is housed within 400 feet of Vita Restaurant
5 and Lounge.

6 Vita Lounge and Restaurant was
7 monitored on 10 separate occasions by ABRA
8 personnel from Saturday, February 15, 2014, to
9 Saturday, March 10, 2014. During the --

10 MR. SMITH: Could you repeat those
11 dates, please?

12 INVESTIGATOR APRAKU: Friday,
13 February 15, 2014 to Saturday, March 10, 2014.

14 MR. SMITH: Okay. Thank you.

15 INVESTIGATOR APRAKU: During the
16 course of monitoring, ABRA Investigators did
17 not observe any loitering, criminal activity
18 or excessive trash around Vita Lounge. ABRA
19 Investigators did not observe any excessive
20 noise emanating from the establishment.

21 ABRA Investigators observed that
22 there was limited parking available on 9th

1 Street, N.W., especially during the nighttime
2 and weekend hours. Thank you. That concludes
3 my report.

4 CHAIRPERSON MILLER: Okay. Are
5 there Board questions? Mr. Apraku, I'll ask
6 you a couple.

7 INVESTIGATOR APRAKU: Okay.

8 CHAIRPERSON MILLER: So how long
9 have you been with ABRA?

10 INVESTIGATOR APRAKU: I have been,
11 approximately, two and a half years.

12 CHAIRPERSON MILLER: Okay. So now
13 for those two and a half years, have you had
14 a chance to monitor this establishment?

15 INVESTIGATOR APRAKU: Yes.

16 CHAIRPERSON MILLER: Okay. And
17 have you seen a change over that period of
18 time?

19 INVESTIGATOR APRAKU: I can see.
20 Objectively, I can see that there has been a
21 shift from what it was when I first started.
22 My first incident -- my first interaction with

1 the establishment was the 2011 stabbing, that
2 was my first day, my first or second day at
3 this job.

4 So from then on, I mean, I have
5 seen a bit of a different, you know, change
6 from -- since then to now. But again, I don't
7 want to make, you know, a grand statement as
8 to how they have been operating or what their
9 operating procedures are. But from my
10 professional status, I have seen a change.

11 CHAIRPERSON MILLER: So a change
12 for the better?

13 INVESTIGATOR APRAKU: Yes.

14 CHAIRPERSON MILLER: How about
15 with respect to noise complaints? Have there
16 been as many recently as there used to be?
17 How is that?

18 INVESTIGATOR APRAKU: When I first
19 started the job, there was at least a
20 complaint at least every time I was on my
21 shift. I think pretty much every weekend
22 there was a -- we were visiting Vita Lounge.

1 But as of now, I mean, I have been
2 involved in the Noise Task Force since last
3 year. We have been to Vita Lounge several
4 times. We have done noise readings there. We
5 haven't ever had to give them a warning or a
6 citation. So again, maybe that speaks to it.
7 Maybe they have changed or maybe -- I can't
8 really make a deduction, but again, I have
9 been there in a professional capacity doing
10 noise task abatement and we haven't had an
11 issue.

12 CHAIRPERSON MILLER: Okay. And
13 when did the Noise Task Force start visiting
14 this establishment, do you know?

15 INVESTIGATOR APRAKU: I'm sorry,
16 I --

17 CHAIRPERSON MILLER: Was it like a
18 few months ago?

19 INVESTIGATOR APRAKU: -- do not
20 have the exact dates on me personally. I do
21 not have the exact dates.

22 CHAIRPERSON MILLER: Okay.

1 INVESTIGATOR APRAKU: I know we
2 did Noise Task Force and noise readings there,
3 I believe, two or three times last year.

4 CHAIRPERSON MILLER: Okay.

5 INVESTIGATOR APRAKU: But I don't
6 -- we haven't done any while I have been on
7 shift this year.

8 CHAIRPERSON MILLER: Okay.

9 INVESTIGATOR APRAKU: Yes.

10 CHAIRPERSON MILLER: So this is
11 characterized as a lounge, which is -- you
12 know, that's not a word that is used in our
13 regulations, but is it just called a lounge or
14 is it the fact that it's this lounge makes it
15 comparable to some specific types of taverns,
16 which are its competition as opposed to anyone
17 -- any establishment that has a tavern
18 license?

19 INVESTIGATOR APRAKU: Yes.
20 Regarding them being specifically stated as a
21 lounge, I kind of don't really know what that
22 necessarily makes the establishment

1 necessarily. A lot of places even clubs, some
2 clubs are named lounge, so I can't really make
3 a differentiation between a tavern who has
4 lounge in its name and a tavern that doesn't.

5 CHAIRPERSON MILLER: Okay.

6 INVESTIGATOR APRAKU: I don't know
7 what the specifics are.

8 CHAIRPERSON MILLER: Okay. So
9 what I'm kind of getting at is I just heard
10 opening statements.

11 INVESTIGATOR APRAKU: Yes.

12 CHAIRPERSON MILLER: That's all.
13 So the applicant says that if they cut back an
14 hour, that they won't be able to -- that it
15 will hurt their business terribly, because the
16 other establishments that they -- that are
17 similar --

18 INVESTIGATOR APRAKU: Yes.

19 CHAIRPERSON MILLER: -- they are
20 allowed to go an hour later or the regular
21 hours. Are you familiar with the places they
22 might be comparing themselves to? I mean,

1 I'll ask them when they come up, but since you
2 are here now.

3 INVESTIGATOR APRAKU: Well,
4 generally, most establishments -- I wouldn't
5 be able to state specific ones that they
6 compare themselves to, but most establishments
7 preferably want to stay open later in order to
8 garner more business.

9 I guess the logic behind what she
10 is stating is if there is someone who is open
11 later --

12 CHAIRPERSON MILLER: Right.

13 INVESTIGATOR APRAKU: -- the --
14 potentially people can get served at a place
15 that stays later -- can get served more
16 alcohol at a place that stays later, compared
17 to someone who closes late. So she feels like
18 maybe she lose business.

19 CHAIRPERSON MILLER: Right.

20 INVESTIGATOR APRAKU: But I
21 can't --

22 CHAIRPERSON MILLER: Well, I think

1 what I was hearing, you know, and you are
2 going first, so --

3 INVESTIGATOR APRAKU: Yes.

4 CHAIRPERSON MILLER: -- they are
5 saying, you know, all these other places can
6 stay open.

7 INVESTIGATOR APRAKU: Yes.

8 CHAIRPERSON MILLER: And what the
9 protestants are saying is, I heard, that oh,
10 no, all these other places have voluntary
11 agreements and they are not staying open late.

12 INVESTIGATOR APRAKU: Yes.

13 CHAIRPERSON MILLER: So I don't
14 know if you are familiar with any in the area
15 or --

16 INVESTIGATOR APRAKU: No, I'm not.
17 And from my understanding, this is a bit of a
18 new thing that is being pursued in that
19 particular area as far as trying to get
20 establishments to sign voluntary agreements
21 that limit their hours.

22 CHAIRPERSON MILLER: Yes.

1 INVESTIGATOR APRAKU: But I'm not
2 professionally or personally aware of which
3 establishments have gone ahead and done that.

4 CHAIRPERSON MILLER: Okay. Any
5 other questions? Okay. Now, we will go to
6 the parties then. Applicant?

7 CROSS-EXAMINATION

8 MR. HIBEY: Yes, I was wondering
9 if I could narrow it down just a little bit?

10 INVESTIGATOR APRAKU: Absolutely.

11 MR. HIBEY: How long that Noise
12 Task Force has been in effect?

13 INVESTIGATOR APRAKU: It has been
14 in --

15 MR. HIBEY: So I know you said you
16 couldn't say exactly when it started, but --

17 INVESTIGATOR APRAKU: Yes.

18 MR. HIBEY: -- could you ballpark
19 it?

20 INVESTIGATOR APRAKU: It's roughly
21 probably March of last year.

22 MR. HIBEY: Okay.

1 INVESTIGATOR APRAKU: Yes,
2 probably.

3 MR. HIBEY: So almost a year and a
4 half?

5 INVESTIGATOR APRAKU: About a year
6 and a half, yes.

7 MR. HIBEY: And during that time
8 when you have been on the Noise Task Force,
9 you have been to the business to take noise
10 readings?

11 INVESTIGATOR APRAKU: Yes.

12 MR. HIBEY: On about how many
13 occasions?

14 INVESTIGATOR APRAKU:
15 Approximately, three occasions.

16 MR. HIBEY: And what did the
17 readings show?

18 INVESTIGATOR APRAKU: Well, again,
19 that would be more of a DCRA question, because
20 DCRA is in charge of taking the noise readings
21 and they have the accurate readings and that's
22 part of their records.

1 However, the reading was such that
2 it wasn't counted as a violation or a cause
3 for us to go over there and warn them. When
4 DCRA does a noise reading and they initially
5 always give a warning if the establishment
6 exceeds 65 decibels.

7 Each time we were there, it did
8 not exceed 65 decibels, so we didn't need --
9 we didn't have a reason to go in there and
10 give them official warning.

11 MR. HIBEY: Okay. And you also
12 said that when you first started out, there
13 were some pretty consistent regular
14 complaints?

15 INVESTIGATOR APRAKU: Yes.

16 MR. HIBEY: Let's use that same
17 time frame. Since about March of last year,
18 how many complaints have you had?

19 INVESTIGATOR APRAKU: Personally,
20 when I was -- since I -- I haven't received
21 any while I was working. But again, we have
22 two teams that have both -- one works on

1 nights and one works on daytimes. Personally,
2 I haven't received any myself, but that
3 doesn't mean that no noise complaints have
4 come in.

5 Again, also a noise complaint can
6 come in and we can go and it may not be
7 substantiated. So again, I can't necessarily
8 make a judgment and say no, none have been in
9 since this time frame. Maybe they came in and
10 they weren't substantiated.

11 MR. HIBEY: Right.

12 INVESTIGATOR APRAKU: Or maybe
13 they came in on a different shift when I
14 wasn't active.

15 MR. HIBEY: Okay. But for you
16 personally since March of 2013, you have
17 issued no warnings or citations to the
18 business?

19 INVESTIGATOR APRAKU: No. I
20 personally have not.

21 MR. HIBEY: All right. Thank you.

22 INVESTIGATOR APRAKU: Thank you.

1 CHAIRPERSON MILLER: Okay. Do the
2 protestants have any questions?

3 MR. DANILOVICS: I don't have your
4 diagram showing the Zoning Map in front of me,
5 but --

6 INVESTIGATOR APRAKU: Yes.

7 MR. DANILOVICS: -- does your map
8 note that the center line down Naylor Court
9 abuts to a Residential Zone?

10 INVESTIGATOR APRAKU: I actually
11 do not have that part. I'm not sure.

12 MR. DANILOVICS: Okay. Okay.

13 INVESTIGATOR APRAKU: I don't
14 know.

15 MR. DANILOVICS: And then can you
16 confirm that -- what the decibel requirement
17 is for a Residential Zone?

18 INVESTIGATOR APRAKU: Oh, the
19 decibel requirement for a Residential Zone?
20 I'm sorry, I can't. I can't confirm that.
21 It's more with DCRA.

22 MR. DANILOVICS: I did notice in

1 your listing of the ABRA licenses within a
2 certain circumference you pulled it from a DC
3 GIS Map.

4 INVESTIGATOR APRAKU: Yes.

5 MR. DANILOVICS: It did not list
6 two recent applicants.

7 INVESTIGATOR APRAKU: Okay.

8 MR. DANILOVICS: The American and
9 Lost and Found.

10 INVESTIGATOR APRAKU: I simply go
11 by what is provided there.

12 MR. HIBEY: Okay.

13 INVESTIGATOR APRAKU: So I mean,
14 if it hasn't been updated at the time --

15 MR. HIBEY: I'm assuming it's a
16 timing issue between --

17 INVESTIGATOR APRAKU: Yes.

18 MR. HIBEY: -- what they have
19 and --

20 INVESTIGATOR APRAKU: Yes,
21 exactly. If it didn't update during that time
22 frame, I'm sure it may have adjusted by not,

1 but, again, the report was written in March,
2 so, you know, it has been kind of ice since
3 then. But yes, if it wasn't on there, then it
4 wasn't something that I put on there.

5 MR. HIBEY: Thank you. That's
6 all.

7 CHAIRPERSON MILLER: Okay. Thank
8 you very much.

9 INVESTIGATOR APRAKU: Okay. Thank
10 you.

11 CHAIRPERSON MILLER: Okay.
12 Applicant? I want to swear you in.
13 Whereupon,

14 ABEBA BEYENE
15 was called as a witness by Counsel for the
16 Licensee, and having been first duly sworn,
17 assumed the witness stand and was examined and
18 testified as follows:

19 MS. BEYENE: Yes, I do.

20 CHAIRPERSON MILLER: Okay. Thank
21 you.

22 DIRECT EXAMINATION

1 MR. HIBEY: Good afternoon.

2 MS. BEYENE: Good afternoon.

3 MR. HIBEY: Could you, please,
4 state your name and spell it for us?

5 MS. BEYENE: Abeba Beyene. First
6 name A-B-E-B-A last name B-E-Y-E-N-E.

7 MR. HIBEY: All right. And do you
8 go by Mimi?

9 MS. BEYENE: Yes.

10 MR. HIBEY: Okay. Where do you
11 live?

12 MS. BEYENE: I live 130 M Street,
13 N.E., Washington, D.C.

14 MR. HIBEY: And how long have you
15 lived there?

16 MS. BEYENE: Three years.

17 MR. HIBEY: And I guess tell us
18 what you do for a living.

19 MS. BEYENE: I am the owner of
20 Vita Restaurant and Lounge/Penthouse Nine
21 located at 1318 9th Street, N.W., D.C.

22 MR. HIBEY: How long have you

1 owned that business?

2 MS. BEYENE: A little bit over
3 three years now.

4 MR. HIBEY: And can you tell us
5 what kind of business that is?

6 MS. BEYENE: When I bought it, it
7 was a nightclub. And I change it to -- it's
8 two floors, so I change upstairs as restaurant
9 and lounge, meaning I sell food from 5:00 p.m.
10 to 1:00 a.m. every day open.

11 MR. HIBEY: Okay. And prior to
12 running this business, what was your
13 background or what did you do before that?

14 MS. BEYENE: Since I came to the
15 U.S. for 15 years, I work as a bar manager and
16 bartender at several lounges in the city.

17 MR. HIBEY: Okay. So this was
18 your first time as an owner, right?

19 MS. BEYENE: Yes.

20 MR. HIBEY: All right. And tell
21 us how it started and how things were at the
22 beginning.

1 MS. BEYENE: I think when I
2 started, it was just a dream, an American
3 dream for me. I saved my money and I bought
4 a business, a \$210,000 tavern license with
5 entertainment endorsement was with Mr. Tom
6 McGuire. And I did a little bit of
7 renovation.

8 And I opened the business, how
9 they were operating it as a nightclub. I
10 opened less nights. Not like now, I open
11 seven days a week pretty much. I just used
12 the sound system they used. I used all the
13 speakers and all the sound system. It came
14 with the business, that's what I paid money
15 for.

16 MR. HIBEY: Okay. And well how
17 did that impact the neighborhood? Do you
18 know?

19 MS. BEYENE: I think when I bought
20 the business, I didn't even know what a
21 voluntary agreement means. I didn't know
22 there was a residential next to the

1 establishment, which is -- we share a wall.
2 The only thing I can see next door is -- at
3 that-- in particular right now is a
4 restaurant. At that time it was a sign, it
5 says commercial property for listing. So I
6 assume it's another commercial building right
7 next to the establishment.

8 Soon after, I start getting
9 complaints from the neighborhood. Quickly I
10 realize I share -- the upstairs shares a wall
11 with condominium. I believe it is four or
12 five condominium. I have never been inside,
13 but that's what -- that's the information I
14 had.

15 MR. HIBEY: Okay. So you started
16 getting some complaints?

17 MS. BEYENE: Yes, noise
18 complaints.

19 MR. HIBEY: Okay. And over time,
20 can you tell us what you have done in response
21 to those complaints?

22 MS. BEYENE: Almost everything

1 that I could do, I could be able to do, I did.
2 When I bought the business, the business has
3 17 speakers upstairs. It has 17 speakers
4 downstairs. And the neighbors has been there.
5 I don't know if they actually know that, but
6 there was 34 speakers. It came with it.

7 All of them are functional. And I
8 used at least at the beginning, so when I
9 start having the complaints, basically, I go
10 half, less than half. Upstairs I have six
11 speakers altogether. Downstairs have six
12 speakers altogether. In the establishment
13 from 34, I have 12 speakers working.

14 MR. HIBEY: Okay. Can you tell us
15 what else you did besides disconnect those
16 speakers?

17 MS. BEYENE: I think immediately
18 what I did, actually at that time,
19 Investigator Shakoor, he is no longer work for
20 ABRA, gave me an idea to put a limiter on the
21 sound system, which it never had when I bought
22 it.

1 What that limiter does for the
2 music to be limited and level and the
3 neighbors came inside the establishment.
4 There was more beside Mr. Martin and I don't
5 know if -- there were several neighbors. And
6 I had a sound engineer. I had Mr. Shakoor.
7 So we did a limiter on both floor of the sound
8 system.

9 What that does, if anybody want to
10 go higher than what is that -- you know, we
11 agreed, the neighbors agreed with the sound
12 level. What that -- what the limiter does if
13 the sound go higher than what it is supposed
14 to, it will completely cut off.

15 MR. HIBEY: Okay. The neighbors
16 were involved in that process?

17 MS. BEYENE: Yes.

18 MR. HIBEY: How so?

19 MS. BEYENE: We -- Mr. Shakoor
20 approached the neighbors and they came inside
21 the establishment. A few people stayed in the
22 establishment. I believe one or two people

1 went to the condominium next to me, so they
2 was texting each other back and forth just to
3 agree with a limit, a set level of the sound.

4 We agree upon that and it's that
5 way ever since then.

6 MR. HIBEY: Okay. So there was
7 people inside the condominium while you were
8 messaging -- turning the sound system up and
9 down to determine what level of sound --

10 MS. BEYENE: Which level is
11 acceptable.

12 MR. HIBEY: -- would actually get
13 rid of --

14 MS. BEYENE: Yes.

15 MR. HIBEY: Okay. And so since --
16 so you have a limiter on the sound system now?

17 MS. BEYENE: Yes, both floor.

18 MR. HIBEY: Okay. And then is
19 there anything else that you have done?

20 MS. BEYENE: I mean, one thing I
21 realize what I do normally at the back of the
22 building when I get complaints, mostly from

1 Mr. Martin Smith's house, which is about 110
2 feet away, I go in the back when the business
3 is running and one thing I realized, the
4 emergency door that I have at the back of the
5 building you can hear a little bit of noise
6 coming out of that.

7 So what I did was I use a
8 professional company and they sealed the door.
9 I also brought Mr. Darrell from Fire Marshal
10 to show them it is appropriately done.

11 MR. HIBEY: Okay. I want to go
12 through some pictures with you. So I'm going
13 to hand you what has been marked as, I think
14 it is, Licensee 1 through 21.

15 (Whereupon, the above-referred to
16 documents were marked as Licensee
17 Exhibit No. 1 through 21 for
18 identification.)

19 MS. BEYENE: Yes.

20 MR. HIBEY: If you could just look
21 through those while I'm distributing some
22 more. I have pictures for everyone. Can I

1 hand those up?

2 CHAIRPERSON MILLER: I think
3 someone will come get them. Maybe, the
4 exhibits. How many copies do you have?

5 MR. HIBEY: I was told I need
6 seven, but I have got enough for everyone
7 here --

8 CHAIRPERSON MILLER: Okay.

9 MR. HIBEY: -- for the first 19,
10 first 18.

11 CHAIRPERSON MILLER: Okay.

12 MR. HIBEY: And then 19, 20 and
13 21, I'm short one.

14 CHAIRPERSON MILLER: Okay.

15 MR. HIBEY: But then we can give
16 you more.

17 Okay. Mimi, have you had a chance
18 to take a look at these 21 or so pictures?

19 MS. BEYENE: Yes.

20 MR. HIBEY: Okay. Let's start
21 with the last three actually, because those
22 give a little bit more perspective.

1 Can you tell us what we are
2 looking at in the picture that is marked
3 Licensee 19?

4 MS. BEYENE: Yes. This is the
5 first level of the lounge.

6 MR. HIBEY: Okay. So that's the
7 first floor sort of main --

8 MS. BEYENE: Main, yes.

9 MR. HIBEY: -- area?

10 MS. BEYENE: Main floor of the
11 lounge.

12 MR. HIBEY: Okay. And --

13 MEMBER SILVERSTEIN: Mr. Hibey?

14 MR. HIBEY: Yes?

15 MEMBER SILVERSTEIN: We don't have
16 a 19.

17 MR. HIBEY: I'm sorry. It's up
18 there. I'll hold on one second.

19 MEMBER SILVERSTEIN: Oh, thank
20 you.

21 MR. HIBEY: Sorry, I probably
22 wasn't going to use 19, 20 and 21 and then I

1 saw they give a little bit more depth.

2 MEMBER SILVERSTEIN: Okay.

3 MR. HIBEY: Just so you can sort
4 of familiarize yourself.

5 MEMBER SILVERSTEIN: Proceed.

6 MR. HIBEY: Okay. So 19 was the
7 main first floor area.

8 MS. BEYENE: Yes.

9 MR. HIBEY: And what is depicted
10 in 20 and -- well, let's just go with 20.

11 MS. BEYENE: 20 is second floor,
12 the front area.

13 MR. HIBEY: Okay. That's the
14 front of the second floor?

15 MS. BEYENE: Yes.

16 MR. HIBEY: Those windows in the
17 back of the picture there, they look out onto
18 9th Street?

19 MS. BEYENE: Yes.

20 MR. HIBEY: Okay. And then
21 Licensee 21, what is that?

22 MS. BEYENE: 21 is the main floor

1 upstairs.

2 MR. HIBEY: Okay.

3 MS. BEYENE: Second floor.

4 MR. HIBEY: All right. Now, so
5 there is two floors?

6 MS. BEYENE: Yes.

7 MR. HIBEY: Okay. And on the
8 second floor there is this front area depicted
9 in Licensee 20?

10 MS. BEYENE: Yes.

11 MR. HIBEY: There is this main bar
12 area in Licensee 21?

13 MS. BEYENE: Yes.

14 MR. HIBEY: Okay. And then there
15 is also a back area.

16 MS. BEYENE: Yes.

17 MR. HIBEY: And that's not
18 depicted in any of these pictures on that
19 second floor, right?

20 MS. BEYENE: Yes.

21 MR. HIBEY: Okay. We are not
22 looking at any pictures of that right now.

1 MS. BEYENE: Okay. Okay.

2 MR. HIBEY: And then on the first
3 floor, there is this main area that is in 19.

4 MS. BEYENE: Yes.

5 MR. HIBEY: And across from that,
6 directly across from that is what?

7 MS. BEYENE: Bar.

8 MR. HIBEY: There is a bar there
9 on the first floor?

10 MS. BEYENE: Yes.

11 MR. HIBEY: And then let's go to
12 these other pictures, 1 through 18. Can you
13 tell us what we see in Licensee 1?

14 MS. BEYENE: Licensee 1 is the
15 second floor of the lounge where the main bar
16 is.

17 MR. HIBEY: Okay. And who took
18 these pictures?

19 MS. BEYENE: I did.

20 MR. HIBEY: So Licensee 1 is sort
21 of across from Licensee 21. Is that right?

22 MS. BEYENE: Yes.

1 MR. HIBEY: All right. Now, in
2 the main part of this picture you see a couple
3 of speakers?

4 MS. BEYENE: Yes.

5 MR. HIBEY: All right. Are those
6 speakers functioning?

7 MS. BEYENE: One. The one to the
8 left.

9 MR. HIBEY: The one to the left
10 that is sort of -- you can't really even see
11 because the picture is not that high quality?

12 MS. BEYENE: Yes.

13 MR. HIBEY: All right.

14 MS. BEYENE: I mean it was -- it
15 came like that, it's two.

16 MR. HIBEY: Right.

17 MS. BEYENE: But I didn't take it
18 out because a part of the look, but the one to
19 the right is disconnected, is not even wire
20 connected to it. The one to the left is
21 functioning.

22 MR. HIBEY: Okay. Can you tell us

1 what we see in Licensee 2?

2 MS. BEYENE: Licensee 2 is similar
3 to --

4 MR. HIBEY: What floor is that?

5 MS. BEYENE: That's the second
6 floor.

7 MR. HIBEY: Okay.

8 MS. BEYENE: That --

9 MR. HIBEY: In the same bar area?

10 MS. BEYENE: -- front area. The
11 front area.

12 MR. HIBEY: Different area?

13 MS. BEYENE: The front area.

14 MR. HIBEY: Oh, it's in the front
15 part.

16 MS. BEYENE: Yes.

17 MR. HIBEY: Okay. There is two
18 speakers in that picture. Are those speakers
19 connected or disconnected?

20 MS. BEYENE: The one on the top of
21 the TV --

22 MR. HIBEY: Yes.

1 MS. BEYENE: -- it works.

2 MR. HIBEY: It works.

3 MS. BEYENE: The one to the right
4 is disconnected.

5 MR. HIBEY: Okay. Those two that
6 we have gone over that are disconnected, why
7 are they disconnected?

8 MS. BEYENE: To eliminate the
9 noise complaint.

10 MR. HIBEY: What is in Licensee 3?

11 MS. BEYENE: Licensee 3 is the
12 back room of the second floor.

13 MR. HIBEY: Okay. And there is a
14 TV and two speakers. Are those speakers
15 connected or disconnected?

16 MS. BEYENE: It came with it
17 actually. It is the two -- the two to the
18 right, there is four to the left.

19 MR. HIBEY: Do you want to look at
20 Licensee 4?

21 MS. BEYENE: Yes.

22 MR. HIBEY: Okay. Licensee 3 and

1 4, are those the four that you were talking
2 about in Licensee 4?

3 MS. BEYENE: Yes.

4 MR. HIBEY: All right.

5 MS. BEYENE: So those six
6 speakers, it came with the establishment, but
7 they no longer functional. I disconnected
8 them.

9 MR. HIBEY: All six?

10 MS. BEYENE: Yes.

11 MR. HIBEY: Okay. What's in
12 Licensee 5?

13 MS. BEYENE: Licensee 5 is the
14 second floor, the front part, similar to
15 Licensee 20. The window just open.

16 MR. HIBEY: Okay. There is a
17 window in the middle that is not open?

18 MS. BEYENE: Yes.

19 MR. HIBEY: And there is two
20 speakers above each window. Do those -- are
21 those speakers connected?

22 MS. BEYENE: Yes.

1 MR. HIBEY: So those speakers
2 work?

3 MS. BEYENE: Yes.

4 MR. HIBEY: All right. What's in
5 Licensee 6?

6 MS. BEYENE: Licensee 6 is a DJ,
7 where the DJ plays, DJ booth.

8 MR. HIBEY: Okay. What does this
9 picture show?

10 MS. BEYENE: The DJ booth is one
11 speaker and monitor. Most when DJ plays, they
12 have to hear, they have to have a monitor and
13 speaker and that's right next to the DJ booth.

14 MR. HIBEY: Okay. So is there a
15 speaker in that picture?

16 MS. BEYENE: Yes.

17 MR. HIBEY: Is it functioning?

18 MS. BEYENE: Yes.

19 MR. HIBEY: Are there any that are
20 non-functioning in that picture?

21 MS. BEYENE: Yes. It's only one
22 functioning in this picture.

1 MR. HIBEY: Okay. What does
2 Licensee 7 show?

3 MS. BEYENE: Licensee 7 is the
4 room at the back second floor, the one where
5 those six speakers were.

6 MR. HIBEY: Right.

7 MS. BEYENE: By disconnecting the
8 six speakers, I use one speaker only.

9 MR. HIBEY: Is that the one --

10 MS. BEYENE: Which is --

11 MR. HIBEY: -- that is pictured
12 here?

13 MS. BEYENE: -- yes, that's in the
14 window looking area.

15 MR. HIBEY: Okay. What do we see
16 in Licensee 8?

17 MS. BEYENE: Licensee 8 is the
18 first floor emergence the back door, emergency
19 door where at the beginning music travels from
20 throughout the alley.

21 MR. HIBEY: Okay. Is this the
22 door that you were talking about before that

1 you sealed?

2 MS. BEYENE: Yes.

3 MR. HIBEY: Okay. Is the sealant
4 pictured in this photo?

5 MS. BEYENE: Yes, that's a sealed
6 emergency door.

7 MR. HIBEY: Okay. And what did
8 you notice about the sound coming from this
9 door after you took those steps to seal it?

10 MS. BEYENE: No sound comes out of
11 it. The back area of the building when
12 countless of times I go out the back and
13 monitor, there is no sound comes out of those
14 doors or the windows.

15 MR. HIBEY: Okay. What is in
16 Licensee 9?

17 MS. BEYENE: Okay. That is when I
18 bought the business, the first floor, the back
19 area has six powerful speakers. Each and
20 every speaker in that area is disconnected.
21 In fact, if you look at the speakers, the
22 speakers stay there because it was always

1 there. The inside part of it if you look at
2 these two speakers, it's out. It's just a
3 shell.

4 MR. HIBEY: Oh, so what you are
5 saying is those are more like cases for
6 speakers?

7 MS. BEYENE: Yes, yes.

8 MR. HIBEY: And there is no
9 speakers inside those cases?

10 MS. BEYENE: Yes, none.

11 MR. HIBEY: And that's the back of
12 the first floor?

13 MS. BEYENE: Yes.

14 MR. HIBEY: What's in Licensee 10?

15 MS. BEYENE: Licensee 10 as well
16 has a speaker on the top of the TV.

17 MR. HIBEY: Yes.

18 MS. BEYENE: Nonfunctional.

19 Underneath, if you can look at it, there was
20 a speaker installed, but it's removed. It's
21 a hole. You can see the hole.

22 MR. HIBEY: The hole in the wall

1 there, there used to be a speaker?

2 MS. BEYENE: That's a speaker.

3 MR. HIBEY: Okay. What part of
4 the bar is this?

5 MS. BEYENE: This is the back area
6 of first floor.

7 MR. HIBEY: Okay. With respect to
8 Licensee 9, where is this wall?

9 MS. BEYENE: To the right side of.
10 This is the back. Licensee 9 is the actual
11 back and this is to the right. Licensee 10 is
12 to the right side.

13 MR. HIBEY: Okay. The right hand
14 side?

15 MS. BEYENE: Right.

16 MR. HIBEY: All right. Maybe we
17 could look at Licensee 11 and 12 together? If
18 those are similar areas, are they?

19 MS. BEYENE: Yes.

20 MR. HIBEY: Okay. Can you tell us
21 what you see in those two pictures?

22 MS. BEYENE: Licensee 11 is also--

1 was a very powerful speaker. It came with the
2 building and no longer functional.

3 MR. HIBEY: And 12?

4 MS. BEYENE: 12 is -- 12 has two
5 speakers. There is one to the right. There
6 is one to the left on the top. The one to the
7 right it works, because that's where
8 underneath if you see the black booth, that's
9 where the DJ stand at. On the top of that,
10 that speaker it's a little bit crooked, that
11 one is the speaker that the DJ use to monitor.
12 That one is functional. The one to the left
13 side is not.

14 MR. HIBEY: Okay. All right.
15 Now, what do we see in Licensee 13?

16 MS. BEYENE: Licensee 13 and
17 Licensee 14 are two speakers, JBL speakers,
18 are located on the top of the ceiling of first
19 floor.

20 MR. HIBEY: Okay. Is this above
21 that seating area depicted in Licensee 19?

22 MS. BEYENE: It's actually in the

1 middle. I don't know how to describe. There
2 is a light from the beginning to the end.

3 MR. HIBEY: The main area of the
4 first floor?

5 MS. BEYENE: The main area of the
6 first floor, yes.

7 MR. HIBEY: Okay. So it is in the
8 middle there up in the -- up at the top near
9 the ceiling?

10 MS. BEYENE: Near the ceiling.

11 MR. HIBEY: All right.

12 MS. BEYENE: It's two of them.
13 One functional, one not.

14 MR. HIBEY: Which one is
15 functional? Is it the one in --

16 MS. BEYENE: The one --

17 MR. HIBEY: -- Licensee 13?

18 MS. BEYENE: -- to the right is
19 functional. The one to the right, that will
20 be Licensee 13.

21 MR. HIBEY: I'm sorry, I didn't
22 hear you.

1 MS. BEYENE: Licensee 13.

2 MR. HIBEY: 13. Okay. All right.

3 What do we see in Licensee 15?

4 MS. BEYENE: Licensee 15 also is
5 built in a speaker. It came with the
6 building. Right when you enter the first
7 floor.

8 MR. HIBEY: Okay.

9 MS. BEYENE: And not functional.
10 It doesn't work.

11 MR. HIBEY: It doesn't work?

12 MS. BEYENE: Yes.

13 MR. HIBEY: All right. What's in
14 Licensee 16, 17 and 18?

15 MS. BEYENE: Okay. This is -- I
16 can't see them. 16 and 17, 18 actually shows
17 when you walk in the right side of the
18 establishment, the right wall of the
19 establishment in front of the bar. Right
20 across the bar.

21 MR. HIBEY: This is the wall
22 behind the seating area on the first floor

1 main area?

2 MS. BEYENE: Yes, on the top of
3 this, yes.

4 MR. HIBEY: Okay. And tell us
5 about these speakers depicted in Licensee 16,
6 17 and 18.

7 MS. BEYENE: There are several
8 speakers. There are four on one side. I
9 believe five on this side. Two on this side
10 work. Two on that side work.

11 MR. HIBEY: Okay. Are they
12 connected and functioning?

13 MS. BEYENE: Two.

14 MR. HIBEY: Two of how many?

15 MS. BEYENE: This side is four.

16 MR. HIBEY: Okay. So in Licensee
17 16 specifically, it looks to me like there is
18 two speakers depicted. Is that right?

19 MS. BEYENE: Yes. It's four came
20 with it, two works, two doesn't work.

21 MR. HIBEY: All right. Do the two
22 in Licensee 16 work?

1 MS. BEYENE: Yes.

2 MR. HIBEY: Does Licensee 17 or 18
3 depict speakers? And if so, where?

4 MS. BEYENE: It's supposed to show
5 the opposite side.

6 MR. HIBEY: Okay.

7 MS. BEYENE: Which has four and
8 two works. Two works on this side. Two works
9 on the other side.

10 MR. HIBEY: I gotcha. All right.
11 So in total when you bought the business, how
12 many speakers were there?

13 MS. BEYENE: 34. It came with it.

14 MR. HIBEY: Okay. And now how
15 many are you using?

16 MS. BEYENE: I use six downstairs
17 and six upstairs.

18 MR. HIBEY: All right.

19 MS. BEYENE: Nothing from the back
20 side, the first floor.

21 MR. HIBEY: Okay. I have a few
22 more pictures for the alley outside that

1 emergency exit door.

2 MS. BEYENE: Yes.

3 MR. HIBEY: All right. And I
4 wanted to just go through some of those with
5 you. I have got stickers for these, but I
6 haven't gotten them all on.

7 CHAIRPERSON MILLER: Okay. Have
8 you --

9 MR. HIBEY: I'm going to handwrite
10 24.

11 CHAIRPERSON MILLER: You're at 24?

12 MR. HIBEY: Well, I'm skipping
13 around.

14 CHAIRPERSON MILLER: Okay.

15 MR. HIBEY: This one is 24. I'm
16 going to handwrite on this.

17 CHAIRPERSON MILLER: Okay.

18 MR. HIBEY: I had surgery on my
19 finger last week, so I'm a little --

20 CHAIRPERSON MILLER: All right.
21 I'll give you a little slack. Protestants
22 have the copies?

1 MR. DANILOVICS: Yes, we do.

2 MR. SMITH: We have a copy of 24,
3 yes.

4 CHAIRPERSON MILLER: Okay.

5 MR. HIBEY: So could I just hand
6 these up?

7 CHAIRPERSON MILLER: All right.
8 Martha, do you want to get it? Thank you.

9 MR. HIBEY: Okay. So I have
10 handed you three pictures numbered 22, 24 and
11 26.

12 (Whereupon, the above-referred to
13 documents were marked as Licensee
14 Exhibit No. 22, 24 and 26 for
15 identification.)

16 MR. HIBEY: Can you tell us what
17 these pictures show?

18 MS. BEYENE: No. 24, that gray
19 building where the door is open --

20 CHAIRPERSON MILLER: Ma'am, I'm
21 sorry, I can't hear.

22 MS. BEYENE: Oh, I apologize.

1 CHAIRPERSON MILLER: You are
2 talking about which?

3 MR. HIBEY: 24.

4 CHAIRPERSON MILLER: 24, okay.

5 MS. BEYENE: I can start with
6 Licensee 26. The gray building is where the
7 establishment is located at. That's the Vita
8 Lounge.

9 CHAIRPERSON MILLER: Okay.

10 MR. HIBEY: That's the back of
11 your business in gray on 26? I'm sorry. 26
12 is the back of your building in gray?

13 MS. BEYENE: Yes.

14 MR. HIBEY: Okay. And what is
15 that in brick?

16 MS. BEYENE: That is -- that
17 building, the first floor is a restaurant.

18 CHAIRPERSON MILLER: Okay.

19 MS. BEYENE: Upstairs is where the
20 condominiums are located.

21 MR. HIBEY: Okay. Sharing that
22 wall with you?

1 MS. BEYENE: Yes.

2 CHAIRPERSON MILLER: Upstairs is
3 what? I'm sorry, there is a little --

4 MS. BEYENE: The condominium.

5 CHAIRPERSON MILLER: The
6 condominium is upstairs?

7 MS. BEYENE: Yes, yes.

8 CHAIRPERSON MILLER: Okay. Thank
9 you.

10 MR. HIBEY: Okay. And what does
11 24 show?

12 MS. BEYENE: 24 show the back door
13 of Vita Restaurant and Lounge, the open door.
14 The one and the building next to it, which is
15 also a commercial building.

16 MR. HIBEY: Okay. So if you put
17 these -- if you put 24 next to 26, 24 would be
18 a little bit further to the left of 26, right?

19 MS. BEYENE: Yes, yes.

20 MR. HIBEY: All right. And then
21 in the picture 24 there is a garage door?

22 MS. BEYENE: Yes.

1 MR. HIBEY: Okay. And then in 22
2 there is also a garage door.

3 MS. BEYENE: Yes.

4 MR. HIBEY: So is that looking
5 down the other direction from the business,
6 22?

7 MS. BEYENE: Yes.

8 MR. HIBEY: So that shows sort of
9 the back side with 24 in the middle as your
10 emergency door and 22 would be to the left of
11 that door and 26 is to the right of that door?

12 MS. BEYENE: Yes.

13 MR. HIBEY: All right. Okay. So
14 let's talk a little bit more about what more
15 can you do. And I want you to tell the Board
16 in addition to disconnecting speakers and
17 putting a limiter on the sound system and
18 sealing the back door, what else could be done
19 to limit sound coming from your business?

20 MS. BEYENE: I mean, obviously,
21 the sound issue is resolved, because most of
22 the time at the beginning, I get noise

1 complaints. I get fined. And I been to in
2 front of you a few times my first year.

3 Ever since then, I learned my
4 lesson. I learned my mistake. At the same
5 time, I learned what businesses and what
6 neighborhood is and what I had to do, what I
7 cannot do.

8 I left my past behind. And I
9 change for better. As if right now, I'm
10 willing to do anything to my neighbors,
11 especially those I share wall with to
12 completely eliminate any sound which is when
13 I actually submit a paper from two
14 construction company who sound -- who do
15 soundproofing. To ABRA I submit that paper
16 for ABRA a little bit over a year ago.

17 The next step is soundproofing and
18 I agreed to do that immediately.

19 MR. HIBEY: Okay. So you are
20 willing to do soundproofing?

21 MS. BEYENE: Yes.

22 MR. HIBEY: Okay. Why haven't you

1 done it yet?

2 MS. BEYENE: Yes, when this
3 protest -- number one, the noise problem
4 stopped. Number two, when this protest came
5 through, when I said when we had mediation, I
6 said I'm willing to do the soundproofing. If
7 we don't go forward with the protest because
8 that's the only issue, the neighbors, you
9 know, a few neighbors still have.

10 And the neighbors asked me we also
11 need, even though you put -- even if you put
12 that soundproofing, we still need to cut your
13 hours. We have to ask the Board to cut your
14 hours.

15 So if I cut the hours, the one
16 hour, it's going to cripple my business. I
17 cannot be able to -- I couldn't be able to
18 open the business. It would just cripple it.
19 So I said let's go forward with the protest.
20 I'm still willing and, in fact, I have the two
21 companies that I want to use with how much it
22 cost and everything to go forward with the

1 soundproofing.

2 But I have to keep my hours.

3 MR. HIBEY: And how much does it
4 cost to do the soundproofing?

5 MS. BEYENE: I have two estimates.
6 One of is \$17,000 and the other one is
7 \$14,500. I believe, yes, \$14,500.

8 MR. HIBEY: Okay. And how were
9 those estimates -- how did you obtain those
10 estimates?

11 MS. BEYENE: The -- it was two
12 different companies. We -- the first time I
13 brought the two companies, I also invite my
14 neighbors to come through with the contractors
15 and the contractors explain what is going to
16 be done, how to completely eliminate the sound
17 and we agree with that.

18 And after that, both company came
19 several times to study where the sound is
20 coming from, not from the back from the -- you
21 know, for the second floor and they did
22 several walk-through, both company different

1 times.

2 MR. HIBEY: Okay. So in addition
3 to that expense of the soundproofing, you also
4 mentioned in talking about sort of why you
5 haven't yet done it. Is that losing an hour
6 would cripple your business?

7 MS. BEYENE: Absolutely.

8 MR. HIBEY: Okay. Can you tell us
9 why?

10 MS. BEYENE: I couldn't survive,
11 because almost every restaurant and lounge in
12 the area that I compare myself to, we target
13 the same crowd. Their hours is 3:00 a.m.
14 closing time. My cliental mostly are
15 Ethiopians and also gay and lesbian, you know,
16 community. And almost each and every place
17 they go to, the hours is 3:00 a.m. They close
18 3:00 a.m. on the weekend. They close 2:00
19 a.m. on the weekdays.

20 There is not one single one in
21 that area with that ZIP Code close an hour
22 early.

1 MR. HIBEY: Well, I'm going to
2 show you a summary document that is marked as
3 Licensee 28.

4 (Whereupon, the above-referred to
5 document was marked as Licensee
6 Exhibit 28 for identification.)

7 MR. HIBEY: Okay. Can you tell us
8 what this is?

9 MS. BEYENE: The Licensee 28 is
10 business with ABRA liquor license located in
11 the same ZIP Code of that area.

12 MR. HIBEY: Okay.

13 MS. BEYENE: I my area.

14 MR. HIBEY: And what --

15 MS. BEYENE: Where I am located.

16 MR. HIBEY: Okay. So you are in
17 ZIP Code? What's your ZIP Code?

18 MS. BEYENE: 20001.

19 MR. HIBEY: Okay. And what type
20 of businesses are in this chart here?

21 MS. BEYENE: Most of them are
22 restaurant/lounge. There is a few coffee

1 shops.

2 MR. HIBEY: Well, there is a
3 column that lists what kind of license they
4 have. What kind of license do they have?

5 MS. BEYENE: Tavern.

6 MR. HIBEY: Okay. So these are
7 tavern licenses?

8 MS. BEYENE: Yes.

9 MR. HIBEY: Tavern licensed
10 establishments in your ZIP Code?

11 MS. BEYENE: Yes.

12 MR. HIBEY: Okay. And they show
13 the closing hours on their licenses, correct?

14 MS. BEYENE: Yes.

15 MR. HIBEY: For the weekdays and
16 the weekends?

17 MS. BEYENE: Yes.

18 MR. HIBEY: Okay. And on this
19 list, there are over 50 establishments, right?

20 MS. BEYENE: I'm not sure.

21 Probably.

22 MR. HIBEY: Okay. And the

1 majority of these close at what time?

2 MS. BEYENE: Weekdays at 2:00,
3 weekends at 3:00 a.m.

4 MR. HIBEY: Okay. And there are
5 some exceptions?

6 MS. BEYENE: Exceptions ones are--

7 MR. HIBEY: Yes. So let's talk
8 about on this list, do you know whether
9 Brookland Flea DC, which closes at 11:00 p.m.,
10 Events Concepts, which closes at 12:00 a.m.,
11 and Hill Country Summer Barbecue at the
12 National Building Museum with 11:00 p.m. on
13 the weekends, of those three, do you know
14 whether they are -- what type of businesses
15 they are?

16 MS. BEYENE: Event Concepts are
17 the -- it's an outside seating. They are
18 license holders, but they only operate at
19 summertime, if I'm not mistaken.

20 MR. HIBEY: Are you talking about
21 -- well, never mind. What about Right Proper
22 Brewing Company? It closes at 1:00 a.m. and

1 Rustic Tavern that closes at 1:00 a.m. Do you
2 view them as similar businesses, competitors,
3 anything like that?

4 MS. BEYENE: No.

5 MR. HIBEY: Of these
6 establishments, who are your competitors, if
7 any?

8 MS. BEYENE: Well, there are
9 several. To mention a few, Cloud Restaurant
10 and Lounge in the same street, U Street
11 Tavern, Bar 7, Velvet Lounge. I have the
12 Queen of Sheba, Yetenbi Restaurant and Lounge,
13 Ghion Restaurant and Lounge, Sax Restaurant
14 and Lounge, Climax Restaurant and Lounge, Shaw
15 Tavern.

16 MR. HIBEY: Okay.

17 MS. BEYENE: I mean to name a few.

18 MR. HIBEY: Right. And there are
19 others in other areas of the city as well,
20 right?

21 MS. BEYENE: Yes.

22 MR. HIBEY: Okay. Any of those

1 ones that you named or any that you would
2 consider competitors, do you know any of them
3 that close before 3:00 a.m. on the weekends?

4 MS. BEYENE: None.

5 MR. HIBEY: Okay. And your
6 current hours of operation are 2:00 a.m. and
7 3:00 a.m. on the weekends, correct?

8 MS. BEYENE: Yes. Open 5:00 p.m.

9 MR. HIBEY: And is there anything
10 else you are willing to do to sort of work
11 with the neighbors?

12 MS. BEYENE: Like I mentioned to
13 Mr. Martin when we had a meeting at ABRA, I'm
14 willing to do the last call at 2:30 and that
15 will give half hour for people to leave the
16 establishment.

17 MR. HIBEY: Okay. And just before
18 -- I don't want to -- I want to bring one more
19 to the Board's attention on this listing of
20 establishments. There is one other that
21 closes at 2:00 a.m. and that's A & D, right,
22 on that list, the exhibit?

1 MS. BEYENE: Yes.

2 MR. HIBEY: Okay. I didn't want
3 to overlook that. And what's your
4 understanding about that?

5 MS. BEYENE: A & D is, I believe,
6 one, two, three, I think, two or three
7 buildings down to the corner of the block. It
8 is a neighborhood bar. I think it was open
9 about, I'm not sure exactly, a year ago or
10 maybe a little bit more than a year.

11 MR. HIBEY: Okay.

12 MS. BEYENE: I'm not sure exactly.

13 MR. HIBEY: All right. I think
14 that's all I have for you right now. Thank
15 you.

16 CHAIRPERSON MILLER: Okay. Thank
17 you.

18 MR. HIBEY: The Board and the
19 protestants will have some questions for you.

20 MS. BEYENE: Okay.

21 CHAIRPERSON MILLER: When you are
22 ready.

1 MR. DANILOVICS: Yes, thank you.

2 CROSS-EXAMINATION

3 MR. DANILOVICS: Good afternoon.

4 You mentioned back in 2011 and 2012 you had
5 multiple meetings with residents and
6 Investigator Shakoor at the time from ABRA.

7 MS. BEYENE: Yes.

8 MR. DANILOVICS: And that
9 subsequent to those meetings, you had two
10 soundproofing companies come in and review
11 your space?

12 MR. HIBEY: Objection.

13 MR. DANILOVICS: Did you have
14 anybody --

15 CHAIRPERSON MILLER: Wait a
16 second. Oh.

17 MR. DANILOVICS: I can rephrase
18 that.

19 CHAIRPERSON MILLER: Are you going
20 to ask a new question instead? Okay. Go
21 ahead.

22 MR. DANILOVICS: Did you have a

1 sound engineer propose recommendations to
2 solve the sound problems that the neighbors
3 were having?

4 MS. BEYENE: Yes.

5 MR. DANILOVICS: And about what
6 time, what date was that?

7 MS. BEYENE: I cannot remember the
8 date. I believe you were there, if I'm not
9 mistaken.

10 MR. DANILOVICS: I can't ask
11 myself.

12 MS. BEYENE: I believe you were
13 there --

14 MR. DANILOVICS: Ballpark?

15 MS. BEYENE: -- with a few other
16 neighbors. I'm not sure when. Mr. Martin was
17 there though.

18 MR. SMITH: I've been to some of
19 them.

20 MS. BEYENE: Huh?

21 MR. SMITH: I've been to some of
22 them.

1 CHAIRPERSON MILLER: No. Oh,
2 okay. You are really actually not supposed to
3 help her out here.

4 MS. BEYENE: Oh, sorry.

5 MR. DANILOVICS: Sorry.

6 CHAIRPERSON MILLER: No, I was
7 talking to him. Okay.

8 MR. DANILOVICS: Were they prior
9 to this year? Was the first meeting with
10 sound engineers prior to 2014?

11 MS. BEYENE: I know we did, I
12 believe, two meeting with the sound engineers
13 and neighbors.

14 MR. DANILOVICS: Yes.

15 MS. BEYENE: That was early 2012.

16 MR. DANILOVICS: 2012?

17 MS. BEYENE: Yes.

18 MR. DANILOVICS: Okay.

19 MS. BEYENE: What took place then
20 is we put sound limiter to amplifier, which
21 control all the sounds in the establishment.
22 So we put a sound limiter on it. We took a

1 picture. We agree upon that limit and that
2 took place.

3 MR. DANILOVICS: Was any
4 soundproofing installed?

5 MS. BEYENE: No.

6 MR. DANILOVICS: Is it possible
7 for those who are using your sound system to
8 override the settings of the limiter?

9 MS. BEYENE: They can't. What
10 sound limiter means, you adjust to certain
11 limits and if you go up, which some DJs do
12 from the laptop, it cut off. The sound cut
13 off. So they cannot go beyond that limit,
14 because it will -- everything will shut down.

15 MR. DANILOVICS: Have you
16 testified to that fact to this Board before?

17 MS. BEYENE: (No audible answer.)

18 MR. DANILOVICS: Okay.

19 CHAIRPERSON MILLER: You have to
20 verbalize it.

21 MS. BEYENE: Oh, yes, yes.

22 CHAIRPERSON MILLER: For the sake

1 of the transcript.

2 MR. DANILOVICS: You mentioned as
3 we approached our arbitration hearings that
4 you had two proposals, one for \$17,000 and one
5 for \$14,500.

6 MS. BEYENE: Yes.

7 MR. DANILOVICS: Do those
8 proposals provide sound installation for the
9 south facing wall which faces the Nine?

10 MS. BEYENE: Yes.

11 MR. DANILOVICS: And is that on
12 the first floor or second floor?

13 MS. BEYENE: Second floor.

14 MR. DANILOVICS: So in insulation
15 on the first floor?

16 MS. BEYENE: There is no sound
17 issue from first floor. The first floor I'm
18 connected to the restaurant.

19 MR. DANILOVICS: Yes.

20 MS. BEYENE: Never, there is never
21 any complaint nor sound complaint from the
22 first. The only sound issue he had first

1 floor is the emergency door. That has been
2 taken care of already.

3 MR. DANILOVICS: Does the proposal
4 have any sound insulation for the back wall on
5 the first floor or second floor?

6 MS. BEYENE: Second floor.

7 MR. DANILOVICS: Just the second
8 floor?

9 MS. BEYENE: Second floor.

10 MR. DANILOVICS: Does the proposal
11 have insulation for the north wall, which
12 faces Darryl Carter Studio and a courtyard
13 which leads to Mr. Smith's house?

14 MS. BEYENE: There is second
15 floor, yes. Second floor the sound system
16 include the back room, which the back side
17 face the hallway where Mr. Martin Smith lives.

18 MR. DANILOVICS: Yes.

19 MS. BEYENE: And also, the back
20 wall where you live at at the Nine.

21 MR. DANILOVICS: So the proposals
22 you have are to do only the second floor south

1 facing wall, north facing wall and rear wall?

2 MS. BEYENE: Everything second
3 floor.

4 MR. DANILOVICS: Okay.

5 MS. BEYENE: Everything second
6 floor.

7 MR. DANILOVICS: Including the
8 ceiling?

9 MS. BEYENE: Everything.

10 MR. DANILOVICS: And facing 9th
11 Street?

12 MS. BEYENE: Everything.

13 MR. DANILOVICS: Okay. ABRA
14 licensees closer to you, excluding the entire
15 20001 ZIP Code, have the same hours proposed
16 as in your settlement agreement that you were
17 presented. Can you explain why you couldn't
18 operate successfully with those hours?

19 MS. BEYENE: Which hours are you
20 talking about?

21 MR. DANILOVICS: The reduced hour
22 to 1:00 during the week and 2:00 a.m. closing

1 on the weekends.

2 MS. BEYENE: Just like I explain
3 it a few minutes to the Board ago, almost --
4 not almost, all the lounges within that area,
5 I'm located at 9th Street, all -- most 9th
6 Street, 11th Street, everything in 20001 ZIP
7 Code, their closing hours with tavern
8 licenses, their closing hours is 3:00.

9 A lot of them in this list, we
10 target the same cliental. When that half hour
11 is crucial time if establishment to close if
12 a cliental is, my cliental, you know, if I
13 close one hour earlier than most places
14 surrounded by that area, they would not come.
15 I have -- most of my nights are gay and
16 lesbian night.

17 There is a gay bar a few blocks up
18 called Nellie's. They have the same hours and
19 target the same people. There are several
20 places that I can mention to you. We have --
21 they close at 3:00 weekends and they close at
22 2:00 weekdays. Almost all of them their last

1 call is 2:45. I agree to do 2:30 to do my
2 last call 2:30, so it will give half hour for
3 people to leave the premises.

4 When it comes to earlier when Mr.
5 Martin mentioned, when people leave, one of
6 the concern that he has is people leave, when
7 the people leave, they don't want the
8 neighborhood to disturb.

9 In order to eliminate that, I use
10 MPD police for several, for a couple of years
11 now. I also have Treasury police who mostly
12 stand outside and when people leave, they, you
13 know, tell them to go to their car quietly.
14 I also have signs which I also submit to the
15 Board, several signs it says it's a
16 residential neighborhood. You know, keep
17 quiet when they leave.

18 On the top of that, when I do --
19 2:45, the minute we turn the lights off,
20 that's when the DJ announce it's a residential
21 neighborhood when you leave, keep quiet. I've
22 been doing that for a couple of years now.

1 MR. DANILOVICS: Have you spoken
2 to any other nightclub owners or tavern owners
3 on the costs that they have incurred when they
4 started their businesses to make settings to
5 their sound system and sound proofing before
6 they were able to open business?

7 MS. BEYENE: The one next door
8 from me?

9 MR. DANILOVICS: Have you talked
10 to any other establishment owners about the
11 costs that they incurred?

12 MS. BEYENE: No, but the previous
13 owner I have emailed. I have several emails
14 between the contractors who build the
15 condominium and the nightclub owner when it
16 was BE Bar. Several going back and forth
17 which include the ANC as well. When they came
18 to view the condominium, then that -- BE Bar
19 was a nightclub. It was operating seven days
20 a week and I have documents that the building
21 and the business owner, you know,
22 communicating with the condominium builders.

1 And at that time, you need to put
2 soundproofing.

3 If you are building residential,
4 you need to put soundproofing, because this is
5 a nightclub. I have several, several, several
6 emails that went back and forth that I can
7 submit to the Board, which they didn't do
8 that.

9 MR. DANILOVICS: Okay. Okay.
10 That's all we have for her.

11 CHAIRPERSON MILLER: Okay. Any
12 Board questions?

13 MEMBER BROOKS: I do.

14 CHAIRPERSON MILLER: Mr. Brooks?

15 MEMBER BROOKS: Thank you, Madam
16 Chair.

17 CHAIRPERSON MILLER: Okay, yes.

18 MEMBER BROOKS: Okay. Ms. Beyene?

19 MS. BEYENE: Yes.

20 MEMBER BROOKS: You indicated that
21 you have installed a limiter on your stereo
22 system?

1 MS. BEYENE: Yes.

2 MEMBER BROOKS: How long ago was
3 that?

4 MS. BEYENE: 2012.

5 MEMBER BROOKS: And have you had
6 complaints since 2012 over noise?

7 MS. BEYENE: I believe one, which
8 is -- no. Yes, I do. Yes, I did. I'm not
9 sure how many, but very few. But there is one
10 open which I dispute. It happened the
11 beginning of this year in February.

12 MEMBER BROOKS: Okay. So since
13 you installed a limiter, you have -- you still
14 have complaints on the noise from the
15 residents?

16 MS. BEYENE: Rarely, but, yes.

17 MEMBER BROOKS: But, yes, you
18 have. Okay. So now, once you put the limiter
19 on, can you control the volume to even go
20 lower?

21 MS. BEYENE: The volume is as low
22 as it can be.

1 MEMBER BROOKS: Oh, okay.

2 MS. BEYENE: The neighbors agreed
3 to that with the sound engineer, it was Mr.
4 Shakoor, at that time, to put the limiter to
5 that level.

6 MEMBER BROOKS: But you still have
7 complaints from the neighbors?

8 MS. BEYENE: From Mr. Smith, yes.

9 MEMBER BROOKS: Okay. And when
10 was the last time, approximately? How long
11 ago?

12 MS. BEYENE: I believe February.
13 I thought it was over a year ago, but I'm not
14 exactly sure what -- the case is still open.

15 MEMBER BROOKS: Oh, I see. Okay.

16 MS. BEYENE: Yes.

17 MEMBER BROOKS: I'm sorry, okay.
18 I gotcha.

19 MS. BEYENE: I dispute that case.

20 MEMBER BROOKS: Okay. I gotcha.
21 You said that. Now, if you were to close an
22 hour earlier --

1 MS. BEYENE: Yes.

2 MEMBER BROOKS: -- how much
3 business would you lose, approximately?

4 MS. BEYENE: I can honestly tell
5 you it's not going to be -- I can't exist.

6 MEMBER BROOKS: Okay. So you
7 would have to close?

8 MS. BEYENE: I have to close.

9 MEMBER BROOKS: Okay. And do you
10 have a dance floor?

11 MS. BEYENE: No, there is no dance
12 floor in the establishment.

13 MEMBER BROOKS: So there is no
14 dancing there?

15 MS. BEYENE: People dance where
16 they stand.

17 MEMBER BROOKS: Okay.

18 MS. BEYENE: Where they stand at.

19 MEMBER BROOKS: And what about a
20 cover charge? Do you have that?

21 MS. BEYENE: I do have a license
22 from ABRA for cover charge, but very rarely we

1 do cover charge because the competition, there
2 is a lot of competition in this city. So I
3 don't really do -- unless it's some holidays
4 or special events, I don't really use the
5 cover charge, but I do have a license for it.

6 MEMBER BROOKS: Now, when you said
7 special event, what are you referring to?

8 MS. BEYENE: I do several
9 corporate events, political events, I do a lot
10 of events.

11 MEMBER BROOKS: Yes, okay. Now,
12 these are not with promoters?

13 MS. BEYENE: No.

14 MEMBER BROOKS: Okay. Thank you,
15 Madam Chair. That's all I have.

16 CHAIRPERSON MILLER: Okay. Yes,
17 Mr. Short?

18 MEMBER SHORT: Good afternoon.

19 MS. BEYENE: Good afternoon, sir.

20 MEMBER SHORT: You have been in
21 business how long?

22 MS. BEYENE: The same business 19

1 years.

2 MEMBER SHORT: The same business?

3 MS. BEYENE: The same -- I mean,
4 my experience. But as an owner, three years.

5 MEMBER SHORT: Okay.

6 MS. BEYENE: A little over three
7 years.

8 MEMBER SHORT: We are speaking
9 specifically of your 9th Street business,
10 correct?

11 MS. BEYENE: Yes.

12 MEMBER SHORT: Okay. Now, what
13 were the hours when you first opened and what
14 are your hours now?

15 MS. BEYENE: I bought the
16 business, as I mentioned. On the voluntary
17 agreement, there are hours. Weekdays starts
18 5:00 p.m. and we can open until 2:00.
19 Weekends 5:00 p.m. to 3:00.

20 MEMBER SHORT: So you have had
21 those same hours for three years?

22 MS. BEYENE: Yes, sir.

1 MEMBER SHORT: Okay. That's all I
2 have, Madam Chair.

3 CHAIRPERSON MILLER: Okay. What
4 kind of police did you say you had?

5 MS. BEYENE: It's two different.
6 Treasury police.

7 CHAIRPERSON MILLER: Treasury
8 police?

9 MS. BEYENE: Treasury police.
10 They call them Treasury police. Those are the
11 two police officers. I don't know if you call
12 them, they call them Treasury police. They
13 can -- they don't carry a gun or wear their
14 uniform of police officers, but if anything
15 happen, they can be able to arrest and call
16 the police immediately.

17 CHAIRPERSON MILLER: Okay. Do
18 they answer to the MPD?

19 MS. BEYENE: They answer to MPD.

20 CHAIRPERSON MILLER: Okay. And
21 when do you have them?

22 MS. BEYENE: I have them almost

1 always weekends.

2 CHAIRPERSON MILLER: Weekends?

3 MS. BEYENE: Yes.

4 CHAIRPERSON MILLER: Okay. And
5 what's the name of the restaurant that is next
6 door to you?

7 MS. BEYENE: Thally's, if I
8 pronounce it right, I believe Thally.

9 CHAIRPERSON MILLER: Thally?

10 MS. BEYENE: Yes, yes.

11 CHAIRPERSON MILLER: And how late
12 do they stay open, do you know?

13 MS. BEYENE: A lot of times by
14 12:00, 12:30 they are gone.

15 CHAIRPERSON MILLER: What?

16 MS. BEYENE: By 12:00, 12:30.

17 CHAIRPERSON MILLER: Oh, 12:30,
18 okay.

19 MS. BEYENE: Yes.

20 CHAIRPERSON MILLER: Do you get
21 complaints about noise from your patrons after
22 they exit your restaurant, your establishment?

1 MS. BEYENE: From the restaurant?

2 CHAIRPERSON MILLER: Complaints
3 about the noise from the patrons as opposed to
4 the noise from the music?

5 MS. BEYENE: No.

6 CHAIRPERSON MILLER: The noise
7 from patrons as they are leaving.

8 MS. BEYENE: I mean, a few times
9 in the past, I have had a police called. That
10 was early my -- in my early year --

11 CHAIRPERSON MILLER: Right.

12 MS. BEYENE: -- of the business.

13 CHAIRPERSON MILLER: So one of the
14 issues that we are focusing on is that 2:00 to
15 3:00 hour in the morning, right? The
16 protestants want you to close at 2:00 and you
17 want to stay open until 3:00.

18 MS. BEYENE: No, I mean --

19 CHAIRPERSON MILLER: So what
20 happens during, you know, at 3:00 or close to
21 -- between 2:00 and 3:00?

22 MS. BEYENE: I think 3:00 there is

1 nobody in the building. You have to take out
2 everybody and no drinking. To be honest with
3 you before I agreed to the 2:30, I normally do
4 my bar close, my last call at 2:30. The DJ
5 announce last call and we turn all the lights
6 up.

7 CHAIRPERSON MILLER: At 2:30?

8 MS. BEYENE: At 2:30.

9 CHAIRPERSON MILLER: You do that
10 now?

11 MS. BEYENE: Yes, I do that now.

12 CHAIRPERSON MILLER: Okay.

13 MS. BEYENE: Yes, I don't -- I'm
14 not sure if I have to, but one thing I learn
15 when you wait until 2:45 or 2:50 and once when
16 everybody comes out, it's -- when they come
17 out everybody together, it's not a -- I have
18 my lesson in the past.

19 So slowly people come out. By
20 3:00 besides my employees, there is nobody in
21 the building. But at that time, 3:00, MPD
22 stays until 4:00. Treasury police stay until

1 4:00. They do not leave that area when --
2 without clearing everything. There is nobody
3 in that area before MPD or Treasury police
4 leaves.

5 CHAIRPERSON MILLER: So have you
6 had complaints, I don't know what this other
7 complaint is, okay, that is pending.

8 MS. BEYENE: I know it's a
9 complaint. That's the last complaint, yes.

10 CHAIRPERSON MILLER: So have you
11 had complaints in the last six months or so
12 with respect to your patrons after closing?

13 MS. BEYENE: No.

14 CHAIRPERSON MILLER: Okay.

15 MS. BEYENE: After closing
16 actually, I don't even remember getting any
17 complaint to be honest with you the past
18 couple of years.

19 CHAIRPERSON MILLER: Okay. Okay.
20 You made the assertion that if you have to
21 close an hour earlier, you're going to have to
22 close your business, that that will kill you.

1 MS. BEYENE: Absolutely.

2 CHAIRPERSON MILLER: Your
3 business.

4 MS. BEYENE: Absolutely.

5 CHAIRPERSON MILLER: And again, I
6 guess people have been asking you what's the
7 basis for that conclusion? I think I have
8 heard you say your competition will be open
9 and they will just go there. Is that what you
10 are saying?

11 MS. BEYENE: On 9th Street, I can
12 count maybe about 10 establishments towards U,
13 not down this way towards U, we have the same
14 cliental. We serve the same kind of food. We
15 have the same hours.

16 What happens people -- even when
17 you close at 3:00, you know, you have to
18 sometimes let people go. You know, people
19 don't want -- when they are drinking, when
20 they are having fun, it's always, you know,
21 you have to turn the light on. You have to
22 announce and all that stuff for them to remove

1 them from the building.

2 If they know that after 2:00 I
3 cannot be able to serve liquor, which I
4 actually serve foot until 1:00 weekdays, until
5 2:00 weekends as well, finger food, and I'm
6 stopping, I'm closing at 2:00 when other
7 places in the area are closing at 3:00, there
8 is no reason for people to come to the
9 establishment.

10 We are targeting the same people.
11 We are serving the same food. There is no
12 difference between my establishment and most
13 of the establishments, most of them you see,
14 in this paper.

15 CHAIRPERSON MILLER: Okay. Let me
16 ask you, can you generalize are there certain
17 hours that you are busiest? You know, for
18 instance if you didn't have that many patrons
19 between 2:00 and 3:00, it might not affect
20 your business as much as you think.

21 MS. BEYENE: We can't -- I'm sure
22 Mr. Martin is aware of that on the weekend.

1 Like let's say Saturday, people come out late.
2 And I can give you an example. Ethiopians, in
3 general, which are most of my cliental they
4 come late. It's just a late crowd. And also,
5 all the cliental that I'm targeting, the gay
6 and lesbians, they don't come early. They
7 come late, even though I have happy hour.

8 I have happy hour every single day
9 of the week, but I have a happy hour cliental
10 and I have also a late hour cliental.

11 CHAIRPERSON MILLER: Well, when
12 you mean late, what time do you mean?

13 MS. BEYENE: I'm sorry, ma'am?

14 CHAIRPERSON MILLER: When you mean
15 late, when you say late, what time do you
16 mean?

17 MS. BEYENE: My happy hour starts
18 at 5:00. By 6:00 I have cliental coming, most
19 of the people from office, after office work.
20 The nightttime on a Friday, like Friday and
21 Saturday after 12:00.

22 CHAIRPERSON MILLER: After 12:00

1 they start coming?

2 MS. BEYENE: Yes.

3 CHAIRPERSON MILLER: That's the
4 late crowd?

5 MS. BEYENE: Yes.

6 CHAIRPERSON MILLER: Okay. Okay.

7 I think this is my last question. So you
8 haven't had problems with -- how many people
9 are coming out of your establishment like at
10 3:00 or 2:00 or whatever?

11 MS. BEYENE: My capacity is 150
12 downstairs and 150 upstairs. There was never
13 a time I had people at my capacity in the
14 building. There was never a time. Maybe
15 2012, I believe New Year's Eve, that's the
16 only time I had that many people in the
17 building.

18 A lot of times, Friday night I do
19 gay events, I got about -- I will have about
20 100 people. I actually invite my neighbors to
21 come and look at it, what kind of people comes
22 in the establishment. You know, decent, hard-

1 working people. Age between 25 to 40. But
2 they don't come early, they come late.

3 But altogether, I can tell you
4 Friday and Saturday downstairs is probably 75
5 to 100. Upstairs will be -- upstairs is most
6 of the time slower about 50 people, 30 people.
7 We normally close upstairs first, clear out
8 upstairs and then go downstairs clear
9 downstairs.

10 It's just never a time where you
11 have so many people at the door of the
12 establishment making noises. It did happen my
13 first year of the business when it was Mood
14 Lounge as I mentioned. Now, I have several
15 restriction on my license, as you know, and
16 there are certain things I can and cannot do.

17 So I follow rules. Everything,
18 every rules that I have on my, you know, ABRA
19 put in place, I follow them accordingly.

20 CHAIRPERSON MILLER: Okay. Thank
21 you. Anybody else have?

22 MEMBER BROOKS: Yes.

1 CHAIRPERSON MILLER: Mr. Brooks?

2 MEMBER BROOKS: Just one final
3 question for me, just out of curiosity more
4 than anything.

5 You mentioned police from the
6 Treasury Department?

7 MS. BEYENE: Yes.

8 MEMBER BROOKS: So why are they
9 there in the neighborhood?

10 MS. BEYENE: They are not in the
11 neighborhood. I pay them.

12 MEMBER BROOKS: Oh, so you --

13 MS. BEYENE: They are my
14 employees.

15 MEMBER BROOKS: Oh, okay. So you
16 have what reimbursable sort of detail?

17 MS. BEYENE: Just like police
18 detail, MPD details.

19 MEMBER BROOKS: Yes.

20 MS. BEYENE: The Treasury police
21 also work for different establishments.

22 MEMBER BROOKS: Oh, okay.

1 MS. BEYENE: When they are not
2 working for, I believe, the city.

3 MEMBER BROOKS: Oh, okay.

4 MS. BEYENE: Yes.

5 MEMBER BROOKS: So how many nights
6 do you use them?

7 MS. BEYENE: Treasury police twice
8 a week, Friday and Saturday.

9 MEMBER BROOKS: And what are their
10 hours?

11 MS. BEYENE: The Treasury police
12 they come at 12:00. They leave at 4:00.

13 MEMBER BROOKS: Okay. Thank you,
14 Madam Chair.

15 CHAIRPERSON MILLER: Okay. Yes,
16 Mr. Short?

17 MEMBER SHORT: You say your
18 capacity, total capacity is about 300? 150
19 upstairs and 150 downstairs?

20 MS. BEYENE: Yes.

21 MEMBER SHORT: Out of that just
22 say 200 people that you would have at closing

1 at 3:00, you say you might have 50 upstairs
2 and?

3 MS. BEYENE: Probably 70 to 100.

4 MEMBER SHORT: Okay. Let me ask
5 you this.

6 MS. BEYENE: We have rarely 100.

7 MEMBER SHORT: Do you have parking
8 for your cliental?

9 MS. BEYENE: I do, but I use
10 valet, U Street Parking as valet provider. We
11 also have street parking. Most of the
12 neighborhood in that area has their own
13 private parking. There are several, several
14 street parkings.

15 MEMBER SHORT: So parking is not a
16 problem for your establishment?

17 MS. BEYENE: No.

18 MEMBER SHORT: Okay. Thank you,
19 Madam Chair.

20 CHAIRPERSON MILLER: Okay. Thank
21 you. Questions on Board questions?

22 MR. DANILOVICS: No.

1 CHAIRPERSON MILLER: Okay.

2 MR. DANILOVICS: Sorry.

3 CHAIRPERSON MILLER: Thank you.

4 Good. Thank you very much.

5 MS. BEYENE: Thank you, ma'am.

6 CHAIRPERSON MILLER: You can be
7 excused, at least from there.

8 MR. HIBEY: So that's our only
9 witness. And we want to move in all those
10 exhibits that we passed up, so it's Licensee
11 1 to 18 was a stack of photos. 19, 20 and 21
12 were photos. And then it was 22, 24 and 26,
13 which were more photos that she talked about.
14 And then I think it was 28 was that list. So
15 we just want to move all those in quick.

16 CHAIRPERSON MILLER: Okay. Any
17 objection?

18 MR. DANILOVICS: No objection.
19 There was no 25?

20 MR. HIBEY: Correct.

21 MR. DANILOVICS: Okay. And no 23.

22 CHAIRPERSON MILLER: No 23. As I

1 understand it, it's Licensee's Exhibits 1
2 through 21, 22, 24, 26 and 28.

3 MR. HIBEY: Correct.

4 CHAIRPERSON MILLER: Okay. Then
5 they are admitted.

6 (Whereupon, the above-referred to
7 documents were received into
8 evidence as Licensee Exhibit 1
9 through 21, 22, 24, 26 and 28.)

10 CHAIRPERSON MILLER: Okay. Thank
11 you. All right. Then we are ready to turn to
12 the protestant.

13 MR. DANILOVICS: And I'm going to
14 call Martin Smith.

15 CHAIRPERSON MILLER: Okay. Oh,
16 you might as well hand it up to me, because
17 our staff person has stepped out. Thank you
18 very much. Okay. I'm going to swear you in.
19 Whereupon,

20 MARTIN SMITH
21 was called as a witness by Counsel for the
22 Protestant, and having been first duly sworn,

1 assumed the witness stand and was examined and
2 testified as follows:

3 MR. SMITH: I do.

4 CHAIRPERSON MILLER: Okay. Thank
5 you.

6 DIRECT EXAMINATION

7 MR. DANILOVICS: And can you
8 introduce yourself to the Board?

9 MR. SMITH: Certainly. My name is
10 Martin Smith, M-A-R-T-I-N S-M-I-T-H. And I
11 reside at 1326 Naylor Court, N.W. If you are
12 looking at the photos that were submitted, if
13 you could -- 24, it's the blue photo.

14 MR. DANILOVICS: If you could turn
15 to Protestant's 4?

16 (Whereupon, the above-referred to
17 document was marked as Protestant
18 Exhibit No. 4 for identification.)

19 MR. SMITH: Yes.

20 MR. DANILOVICS: And can you
21 identify your house in that aerial shot?

22 MR. SMITH: I can. You are

1 looking at the photo here. There is a small
2 white rectangle right here and the middle of
3 that would be mine.

4 CHAIRPERSON MILLER: Wait, where
5 is it? Does it have a number attached?

6 MR. DANILOVICS: I don't. I can--

7 CHAIRPERSON MILLER: Ours have
8 numbers on the rectangles.

9 MEMBER SILVERSTEIN: Ours have
10 numbers.

11 MR. DANILOVICS: Yes, they were
12 showing ABRA licensees.

13 MR. SMITH: I am that house.

14 CHAIRPERSON MILLER: All right.
15 Go back there. We will see whether we can get
16 you to describe it. Well, you are between 7
17 and 1, right?

18 MR. SMITH: Yes.

19 MR. DANILOVICS: Can we refer to
20 applicant's --

21 CHAIRPERSON MILLER: How do you --

22 MR. DANILOVICS: -- exhibit?

1 CHAIRPERSON MILLER: Yes. It's in
2 the record?

3 MR. DANILOVICS: Yes.

4 CHAIRPERSON MILLER: Yes.

5 MR. DANILOVICS: If we could look
6 at Applicant's 26?

7 CHAIRPERSON MILLER: Okay.

8 MR. DANILOVICS: Or 22.

9 CHAIRPERSON MILLER: 22? Okay.

10 MR. DANILOVICS: Yes. And could
11 you identify your house in Applicant 22? I'm
12 sorry.

13 MR. SMITH: Yes. I'm the bright
14 blue house that is two buildings and a vacant
15 lot away the Vita Lounge.

16 MR. DANILOVICS: Okay. Thank you.
17 And how long have you lived at this location?

18 MR. SMITH: This is my fourth
19 year.

20 MR. DANILOVICS: Okay. And why
21 did you chose to move to this location?

22 MR. SMITH: I was really enamored

1 with the neighborhood. I wanted something
2 that had a very diverse community. We have
3 that in the Naylor Court/Blagden Alley area.
4 I also really loved the history of the
5 community. My house predates the Civil War.

6 MR. DANILOVICS: I didn't catch
7 that.

8 MR. SMITH: Oh, I said I really
9 also love the history of the neighborhood. My
10 house predates the Civil War, as do many of
11 the other properties in the area. And I also
12 knew that the 9th Street Corridor was in the
13 process of developing and I was really looking
14 forward to that.

15 MR. DANILOVICS: Mr. Smith, what
16 do you do for a living?

17 MR. SMITH: I run one of the
18 city's Main Street Programs on Capitol Hill,
19 so I work every day with small businesses
20 helping to recruit and retain small businesses
21 to the Capitol Hill community, helping them
22 with lease negotiations, with permitting

1 assistance, also producing events to bring
2 customers to those establishments and working
3 on physical public realm improvements for the
4 area. Streetscape reconstructions and
5 maintenance, things of that nature.

6 MR. DANILOVICS: How long have you
7 been doing this?

8 MR. SMITH: All told about 10
9 years. I have been in this particular job for
10 about five.

11 MR. DANILOVICS: And you mentioned
12 that you help bring businesses into the
13 community. How many businesses have you
14 helped bring into Barracks Row?

15 MR. SMITH: Since I have been
16 there, we have averaged about 12 new
17 establishments a year, so I would say anywhere
18 in the 40 or so range is a fair number that
19 have come in since I started.

20 MR. DANILOVICS: And have any of
21 those new businesses been ABRA licensees?

22 MR. SMITH: Many of them, yes. We

1 have worked extensively with a number of
2 different establishments and also worked
3 extensively with the Capitol Hill community.

4 Two years ago, there was quite a
5 bit of conversation at the ANC level for that
6 ANC requesting a liquor license moratorium.
7 So we did extensive research with a private
8 contracting firm, JS&A, and did a good deal of
9 customer intercept surveys, local resident
10 surveys and found out more information about
11 that and discovered that a moratorium wouldn't
12 be the appropriate tool to address the issues
13 that they were experiencing with the existing
14 ABRA licensees and the applicants.

15 And it was on the basis of that
16 report that the ANC voted not to pursue a
17 moratorium at that point in time.

18 MR. DANILOVICS: The licensees
19 that you have worked with to come into
20 Barracks Row, are any of them nightclubs or
21 operating as nightclubs?

22 MR. SMITH: No. We have CR and CT

1 Licenses. We have no CN Licenses, at this
2 point, on Barracks Row. We had one
3 establishment remaining that was very much so
4 operating as a CN with a CT and entertainment
5 endorsement that closed a few years ago. That
6 type of establishment really isn't a good
7 match for an area that is as densely populated
8 residentially as the Barracks Row community
9 is, even with the commercial zoning that we
10 have on 8th Street.

11 MR. DANILOVICS: And would you
12 equate the development that has been taking
13 place in Barracks Row to be equitable to that
14 that is underway on 9th Street?

15 MR. SMITH: I would say that they
16 are very similar. I would say 9th Street is
17 probably 8 to 10 years behind where 8th
18 Street, S.E., is, but I certainly see them
19 following a very similar trajectory as far as
20 the revitalization of 9th Street and the rest
21 of the Shaw neighborhood.

22 MR. DANILOVICS: Outside of your

1 capacity with Barracks Row Main Street, do you
2 serve in any other public facing capacities?

3 MR. SMITH: I do. I serve on the
4 Alcohol Policy Committee for ANC-2F. I was
5 asked to fill the seat for our local SMD by
6 our Commissioner Greg Melcher.

7 MR. DANILOVICS: And has ANC-2F
8 produced any products, outcome deliverables,
9 within the last year?

10 MR. SMITH: We have. ANC-2F was
11 also starting to have some conversations
12 similar to what we had over in Barracks Row
13 two years ago as to whether or not we have
14 reached a concentration that was as high as we
15 wanted it to get for the current licenses.

16 There was actually an application
17 for a moratorium for the northern portion of
18 ANC-2F and several surrounding ANCs, ANC-2F
19 reaches up in a narrow capacity around 9th and
20 U Street, that was unsuccessful.

21 We looked at that and decided that
22 it would be a better idea and more welcoming

1 to the business community for us to put
2 together a series of guidelines that we
3 created in the form of a template of voluntary
4 agreements for the different sections of ANC-
5 2F that would help to set expectations for
6 business owners for what the surrounding
7 residential community was typically willing to
8 absorb.

9 MR. DANILOVICS: Okay. If you
10 could refer to Protest 3?

11 MR. SMITH: Yes.

12 MR. DANILOVICS: This is Protest
13 3. Could you describe what this is?

14 MR. SMITH: This looks like it is
15 a spreadsheet of different establishments that
16 are in the immediate area surrounding the
17 Naylor Court/Blagden Alley Historic District
18 involving the name of the establishment, the
19 address, the type of license, the current VA/
20 SA date. Then their hours of operations on
21 weekdays and weekends, last call, holiday
22 extension restrictions, live music dance floor

1 and notice to cure periods.

2 (Whereupon, the above-referred to
3 document was marked as Protestant
4 Exhibit No. 3 for identification.)

5 MR. DANILOVICS: Have any of those
6 applicants or those licensees listed recently
7 agreed to the adopted template that your
8 policy committee came up with?

9 MR. SMITH: For the most part,
10 yes. There is actually four on here that are
11 relevant to that portion of the conversation.
12 The settlement agreements that were reached
13 with A&D and Thally were used as the basis of
14 the template that the ANC has put together.

15 So while they predate the
16 template, they mostly have the same criteria.
17 The American and Lost and Found both of which
18 are on the adjacent block to Vita Lounge, both
19 of them used the template as the basis for
20 their settlement agreement. And for the most
21 part, agreed to the terms that were presented
22 in that template.

1 MR. DANILOVICS: And have there
2 been any ABRA license renewals that have
3 agreed to terms similar to what is in the
4 template?

5 MR. SMITH: Yes, there have. The
6 A&D Tavern License was recently renewed. It
7 was a few months ago. I don't have the exact
8 date. And when they renewed, they did not
9 seek to modify the restricted hours of
10 operation for their tavern license. The
11 community did not seek to protest their
12 license to my knowledge, the members of the
13 community that I have spoken with about it.

14 They have not had any substantial
15 concerns that have not been addressed by the
16 establishment, so there was no protest of the
17 renewal.

18 MR. DANILOVICS: And have there
19 been any objections to adopting terms of the
20 template?

21 MR. SMITH: A few. A few.
22 Certainly, there are businesses that have been

1 concerned going into it, however, when you
2 speak with business owners, I spoke with
3 Sherman of Thally, which is adjacent to Vita
4 Lounge just last night, regarding the
5 restriction and the number of hours that he
6 was able to operate, they said that their
7 concerns didn't materialize, that they were
8 actually quite pleased with the outcome.

9 His particular comment was that it
10 avoided the worst of the drunks, so --

11 CHAIRPERSON MILLER: I'm sorry, it
12 avoided the what, the worst of?

13 MR. SMITH: The worst of the
14 drunks at that late hour.

15 CHAIRPERSON MILLER: Okay.

16 MR. SMITH: His words, not mine.

17 MR. DANILOVICS: And if you could
18 refer to Protestant 1, P1?

19 MR. SMITH: Yes.

20 MR. DANILOVICS: And could you
21 describe what this is?

22 MR. SMITH: This is a draft

1 settlement agreement that had been proposed to
2 modify the previous settlement agreement with,
3 at that point I believe it was labeled as,
4 Mood Lounge, but now with Vita Lounge.

5 (Whereupon, the above-referred to
6 document was marked as Protestant
7 Exhibit No. 1 for identification.)

8 MR. SMITH: Going over a handful
9 of fairly basic issues that the rest of the
10 neighbors do have in their settlement
11 agreements as well that details hours of
12 operation, floor utilization, noise, public
13 space, trash, pest control, complaint logs,
14 notice to cure, all of the basic elements of
15 an SA.

16 MR. DANILOVICS: And if you could
17 describe what is marked as Protestant 2?

18 MR. SMITH: This is a summary of
19 the changes between the existing 2008
20 voluntary agreement and the proposed 2014
21 settlement agreement.

22 (Whereupon, the above-referred to

1 document was marked as Protestant
2 Exhibit No. 2 for identification.)

3 MR. SMITH: As you can see, all of
4 the proposed changes fit on one page.

5 MR. DANILOVICS: Have both of
6 those been provided prior to Ms. Beyene?

7 MR. SMITH: Yes, on multiple
8 occasions. We have met with Ms. Beyene at the
9 mediation hearing here in this very room. We
10 also met with Ms. Beyene's attorney. They had
11 requested that we agree to a continuance of
12 the case for an additional 30 days to give us
13 time to further negotiate and see if we could
14 reach a conclusion without getting to this
15 point in the process.

16 We did meet with her attorney for,
17 I guess, an hour or hour and a half or so.

18 CHAIRPERSON MILLER: I just want
19 to -- I'm not sure where you are going, but I
20 just want to caution you that we don't want to
21 hear too much about negotiations. We will
22 consider the proposals that you want, which

1 are embedded in this settlement agreement and
2 in the summary.

3 MR. SMITH: Okay.

4 CHAIRPERSON MILLER: But we don't
5 want to hear like you presented something and
6 then they refused and you know.

7 MR. SMITH: Fair enough.

8 CHAIRPERSON MILLER: All right.

9 MR. DANILOVICS: Are the -- is the
10 settlement agreement in Protestant 1 and the
11 changes described in Protestant 2 consistent
12 with the template that has been created by
13 ANC-2F?

14 MR. SMITH: Yes, I would say for
15 the most part it is.

16 MR. DANILOVICS: You mentioned
17 that the proposed settlement agreement has
18 some changes in it. What are some of the
19 other changes that were requested by the
20 neighborhood that are not reflected in that
21 document?

22 MR. SMITH: The original protest

1 group and the ANC had a number of people who
2 were in favor of a full revocation of the
3 license, which I felt was a little extreme.
4 There was also a request by the other members
5 of the Smith Group to pursue greater
6 restrictions on the hours than what we ended
7 up pursuing and also a fairly unanimous
8 request to pursue a revocation of the
9 entertainment endorsement, which we did leave
10 in tact in the proposed settlement agreement.

11 MR. DANILOVICS: Why do you think
12 these proposed changes are necessary?

13 MR. SMITH: It's a couple of
14 things. Specifically, since we are focusing
15 on the appropriateness standard, operating a
16 tavern license with an entertainment
17 endorsement with promoters which Ms. Beyene
18 used to have up until a stabbing incident a
19 few years ago, really produces a situation
20 where you are operating as a nightclub, not as
21 a bar or a tavern.

22 And unfortunately, the classes of

1 licenses that are available in the District
2 are just very limited. I have long been a
3 supporter of creating additional classes of
4 licenses that could more accurately describe
5 that type of establishment.

6 But when you have a neighborhood
7 that has a number of ABRA-licensed
8 establishments where patrons come and go
9 quietly, where the noise inside is audible
10 background music and not DJ or promoter-based
11 music, where they generally close much
12 earlier. Many of the establishments in the
13 area close before what their requirements are
14 under their settlement agreements.

15 But if they are closing at least
16 an hour or so earlier, and then you have one
17 establishment that is the largest capacity
18 establishment that we have in that area that
19 has the latest operating hours, that has the
20 most noise coming from the establishment, that
21 then opens up and everyone floods out at 3:00
22 in the morning, it's an inappropriate type of

1 license and type of establishment to have in
2 a neighborhood that is a residential community
3 now and has historically been one for the last
4 150 years.

5 You know, I think that the key
6 issue for the neighbors and for the ones in
7 the protest group has been that the problems
8 that are taking place at 2:30, 3:00, 3:30,
9 4:00 in the morning, we know that those are
10 attributed to Vita Lounge, because there is no
11 one else open except for a gas station across
12 the street.

13 We have had consistent problems
14 with noise from the establishment, both from
15 their music and from their base level and from
16 their patrons. Complaints after they have
17 closed at 3:00 in the morning are rarely, if
18 ever, directed to Ms. Beyene. Those most
19 always result in just police calls.

20 And as far as the complaints, yes,
21 there has been a down-tick in them but it's
22 because the neighborhood has gotten so

1 frustrated with how broken that process is at
2 the ABRA level.

3 Complaints take over a year to
4 adjudicate and then months to have any type of
5 resolution and then when that resolution
6 comes, it's a fine of a few hundred dollars.

7 And with the noise situation in
8 this particular case, there is a 30 day notice
9 to cure. The way that Investigator Shakoor
10 informed us that ABRA had interpreted that was
11 that there could only be one noise complaint
12 filed every 30 days. So that means that out
13 of an entire year, if we filed a noise
14 complaint, they had 30 days to correct it
15 before you could file a subsequent complaint
16 that could generate an actual hearing.

17 And then once that complaint had
18 been filed and processed, they had to get
19 another violation and have another 30 days to
20 cure before you could move forward. When the
21 neighbors found out that that meant that no
22 matter how awful the establishment was for how

1 many nights of the week or the year, that they
2 could only get 12 complaints a year maximum.
3 And that was assuming that all 12 complaints
4 actually made it to the adjudication level.

5 People stopped calling, since
6 there wasn't a point. It was so exhausting
7 for us to invest our time trying to document
8 all of these situations to have almost all of
9 them thrown out just over a 30 day cure
10 period. So that's why it is -- it doesn't
11 have the same investigative history more
12 recently than it has had in the past is
13 because when people filed the complaints and
14 it never went anywhere and we waited months or
15 years before we ever heard that the case even
16 got dismissed or that it was moving forward,
17 they stopped putting in the effort.

18 MR. DANILOVICS: To wrap-up, could
19 you refer to Protest 5?

20 MR. SMITH: Sure, yes.

21 MR. DANILOVICS: There is a
22 listing of some noise violations that made it

1 before ABRA.

2 MR. SMITH: Yes.

3 (Whereupon, the above-referred to
4 document was marked as Protestant
5 Exhibit No. 5 for identification.)

6 MR. DANILOVICS: Were you a party
7 to any of those cases?

8 MR. SMITH: Well, I was a party to
9 one of these and it's possible I was actually
10 a party to both of them.

11 MR. DANILOVICS: Okay. And have
12 you filed any recent voluntary agreement
13 violations?

14 MR. SMITH: For the most part, no.
15 It has gotten to a point where when the noise
16 is problematic enough, I will text or email
17 Ms. Beyene directly. The response that I
18 usually get from her is I think everything is
19 fine, so I'm not worried about it.

20 At that point, my choices are to
21 call and wait for an hour or more for an ABRA
22 Inspector to come out and have them file

1 something and maybe get a resolution a year
2 and a half from now or to get resolution right
3 away and just leave my house. And so I will
4 go and stay with a friend or I will go out to
5 a late movie in Chinatown.

6 But it is easier for me to just
7 leave than it is for me to file the complaint.

8 MR. DANILOVICS: That's all I
9 have. Thank you.

10 CHAIRPERSON MILLER: Okay. First
11 I want to welcome Mr. Jones to the dias, who
12 has just joined us.

13 MEMBER JONES: Thank you, Madam
14 Chair.

15 CHAIRPERSON MILLER: Are there
16 Board questions?

17 MR. HIBEY: Could I?

18 CHAIRPERSON MILLER: I'm sorry.
19 Cross? Sorry. I'm glad to introduce Mr.
20 Jones. Okay. Sorry, Mr. Hibey.

21 CROSS-EXAMINATION

22 MR. HIBEY: Mr. Smith, I just want

1 to sort of pick up where you finished at about
2 noise complaints.

3 MR. SMITH: Sure.

4 MR. HIBEY: And you agree that
5 there has been a change in the business and
6 the noise from where it was in 2011 to where
7 it is now, right?

8 MR. SMITH: In some capacities yes
9 and in some capacities no. I would say that
10 the change in the volume of the patrons after
11 they have exited the establishment at closing
12 time has not changed. In fact, in many cases
13 that has gotten worse.

14 I would say that there are
15 certainly occasions where the noise coming
16 from inside the establishment is more
17 manageable. And for me, I want to make sure
18 that I'm very, very clear. My standard is not
19 countryside silence. I am aware that I live
20 in a city. I'm aware that I live in a C-2-A
21 Zone. It's across the street from an R-4
22 Zone, but still it's a C-2-A Zone. I know

1 there is going to be noise.

2 The issue for me is when it gets
3 loud enough that I can't hear a television or
4 have a phone conversation over the volume of
5 the establishment.

6 I did meet with Ms. Beyene a
7 number of times. She referenced those in her
8 testimony. And a number of the neighbors went
9 over. We were inside the establishment. We
10 would test it with different volumes. We
11 reached agreeable limits. But as I explained
12 to her, on all of those occasions, for me,
13 there is a very simple standard. If you come
14 out into the alleyway behind the establishment
15 and you close the door and you can't hear the
16 music, then I can't hear the music, because
17 I'm 100 feet away.

18 And so if it's completely silent
19 outside, you don't have to worry about a
20 complaint from me. And that is something that
21 we hit for a while. There were several months
22 where that was what we had, but as recently as

1 a few weeks ago, I had to text her to request
2 that she lower the music from her
3 establishment and was met with a response that
4 said, essentially, no.

5 MR. HIBEY: Okay. So back to my
6 question. You agree that it has changed over
7 time?

8 MR. DANILOVICS: Objection.

9 MR. HIBEY: Yes, you agree that it
10 has changed over time?

11 MR. SMITH: I agree that some
12 components of it have changed for some period
13 of that time.

14 MR. HIBEY: Okay. And you agree
15 that after she put the limiter in, the noise
16 from the sound system decreased?

17 MR. SMITH: Absolutely not. The
18 limiter had no effect whatsoever.

19 In her previous testimony, Ms.
20 Beyene had said that the limiter would limit
21 the sound system itself, but that DJs had the
22 ability to override that on their laptops.

1 And at one point while we were in the
2 establishment and doing one of these sound
3 checks that we have with her, that was
4 demonstrated for us that it was something
5 where the music was at the maximum volume at
6 the speaker system and then the laptop that
7 was going into that system was used to just
8 drive it right up past that amount.

9 MR. HIBEY: Okay.

10 MR. SMITH: So --

11 MR. HIBEY: So the limiter has
12 done nothing?

13 MR. SMITH: Nothing that I have
14 been able to determine. I think it has been
15 the disconnection of the speakers that has
16 been more effective.

17 MR. HIBEY: All right. So the
18 disconnection of the speakers has been
19 effective?

20 MR. SMITH: I would say it has had
21 a nominal improvement, yes.

22 MR. HIBEY: And you are not making

1 complaints about noise in the last -- well,
2 you stopped making complaints about the noise
3 because you didn't think that system was
4 working?

5 MR. SMITH: For the most part,
6 yes. The protest process seemed like it would
7 be a far more effective route to try and
8 address some of the issues. We knew the
9 license had renewed and was going to come to
10 this type of discussion. We had hoped,
11 certainly everyone had hoped, to be able to
12 reach an agreement long before the mediation
13 process, but certainly before this.

14 And I felt that if we could get to
15 a point where they, the establishment, would
16 close at 2:00 and -- or 1:00 and 2:00 instead
17 of 2:00 and 3:00, that if they got out at
18 2:00, that means that most of their patrons
19 will have dissipated by 2:30, 2:45, 3:00. And
20 if I could have quiet and sleep at 3:00 on a
21 Friday or Saturday night, I would consider
22 that to be enough progress that I would have

1 been pleased with it.

2 But unfortunately, we weren't able
3 to reach that resolution before this point.

4 MR. HIBEY: Okay. You haven't
5 made any complaints to ABRA about this
6 establishment, have you?

7 MR. SMITH: Oh, I have. I'm
8 actually pulling up the dates now. The most
9 recent one was April 20th.

10 MR. HIBEY: Okay. And what prior
11 to that?

12 MR. SMITH: Prior to that, by
13 email in February.

14 MR. HIBEY: Prior to that?

15 MR. SMITH: Prior to that, there
16 is a long, long list.

17 MR. HIBEY: Okay. So when was the
18 one prior to February?

19 MR. SMITH: That would have been
20 right around Thanksgiving.

21 MR. HIBEY: So November of 2013?

22 MR. SMITH: Somewhere in that

1 ballpark, possibly early December.

2 MR. HIBEY: And then prior to
3 that?

4 MR. SMITH: Prior to that would
5 have probably been the summer before. Let
6 me --

7 MR. HIBEY: The summer of 2013 or
8 the summer of 2012?

9 MR. SMITH: '13.

10 MR. HIBEY: Okay. And before
11 that?

12 MR. SMITH: And a number of them
13 in 2012. And going all the way back in 2011.

14 MR. HIBEY: So a number in 2012
15 and a number in 2011, correct?

16 MR. SMITH: Yes.

17 MR. HIBEY: All right. More in
18 2011 and 2012 than in 2013 and 2014?

19 MR. SMITH: Certainly so.

20 MR. HIBEY: So you talked about
21 sort of two different things in your
22 testimony, maybe they're not different, but

1 there seemed to be two general areas.

2 One is noise and then the other is
3 this template.

4 MR. SMITH: Yes.

5 MR. HIBEY: Okay. And I'm not
6 trying to characterize your testimony or
7 anything, but, you know, I saw it as sort of
8 two areas there.

9 And then thing that strikes me is
10 that your template doesn't address sound at
11 all. Can --

12 MR. SMITH: We do actually.

13 MR. HIBEY: -- you look at your
14 Exhibit 1 and show me where your proposed
15 settlement agreement addresses sound?

16 MR. SMITH: Section 5, it reads
17 "Noise: Applicant shall comply with Title 25
18 § 225 of the DC Code making architectural
19 improvements to the property and take all
20 necessary actions to ensure that music, noise
21 and vibrations from the establishment are not
22 audible within any adjacent properties.

Should any sound, noise or music be heard in any residential premises, applicant will take immediate action. Applicant will take reasonable steps to reduce noise emanating from the establishment from the opening of its entry and exit doors."

MR. SMITH: Yes.

MR. HIBEY: Okay.

MR. SMITH: And we use that as --

MR. HIBEY: So turning to --

MR. SMITH: -- the language for
that template.

MR. HIBEY: -- Exhibit 2, which shows the changes.

1 MR. SMITH: Yes.

2 MR. HIBEY: No. 5 shows no change,
3 correct?

4 MR. SMITH: That's correct.

5 MR. HIBEY: Okay. So nothing in
6 your new settlement agreement addresses any of
7 the noise issues.

8 MR. SMITH: That's correct.

9 MR. HIBEY: Or changes it in any
10 way, right?

11 MR. SMITH: That's correct. We
12 feel that this existing language should be
13 sufficient to resolve the noise issues.

14 MR. HIBEY: Okay. This is --

15 MR. SMITH: There is, however, a
16 change in the notice to cure period, which has
17 been the consistent problem with that for the
18 neighbors as far as reporting ABRA violations.

19 MR. HIBEY: Which she did agree
20 to, right?

21 MR. SMITH: Right now there is --
22 yes. Right now there is a 30 day notice to

1 cure. This proposal brings it down to 14 days
2 and requires noise issues to be resolved
3 immediately.

4 MR. HIBEY: Okay. Your template
5 is what you want her to sign, correct?

6 MR. SMITH: This proposed SA, yes.

7 MR. HIBEY: Okay. But it doesn't
8 -- it's not tailored in any way to deal with
9 the noise issues that you have experienced
10 from her sound system, correct?

11 MR. SMITH: It is to the extent
12 that we have been told it would be approved by
13 the ABRA Board. There are certainly many
14 other things that we would like to use in --
15 or to add in. However, we felt that the
16 language that was in the existing VA for Mood
17 Lounge was the language that we would like to
18 adopt for the template for all of the other
19 establishments.

20 With an operator that is
21 responsible and able to address those issues
22 immediately, this certainly sets a very

1 reasonable set of guidelines and boundaries.

2 MR. HIBEY: Okay. And you started
3 using this template after your moratorium was
4 rejected, right?

5 MR. SMITH: I had nothing to do
6 with the moratorium proposal and did not
7 support the moratorium proposal.

8 MR. HIBEY: Okay. But the
9 moratorium was the first attempt in the
10 neighborhood to sort of get things under
11 control, right?

12 MR. SMITH: I wouldn't say it was
13 the first. I would say that it was the
14 largest and loudest, but --

15 MR. HIBEY: It was an attempt?

16 MR. SMITH: I would say it was.
17 More so for the U Street component of ANC-2F
18 rather than the rest of the ANC.

19 MR. HIBEY: Okay. And then when
20 that was rejected, the new Settlement
21 Agreement Template was what was formulated to
22 sort of address similar types of concerns?

1 MR. SMITH: We were working on
2 those concurrently. It wasn't a consecutive
3 process.

4 MR. HIBEY: You earlier testified
5 that after the moratorium was rejected, this
6 was the approach you turned to.

7 MR. SMITH: This was the approach
8 that the ANC chose to pursue and that's one of
9 the reasons why ANC-2F did not support the
10 moratorium.

11 MR. HIBEY: And now this route
12 that you are taking, you have listed a number
13 of establishments that have sort of agreed to
14 this type of a template. Is that right, in
15 Exhibit 3?

16 MR. SMITH: Yes, this is a number
17 of them, yes.

18 MR. HIBEY: All right. A&D agreed
19 to this template, right?

20 MR. SMITH: A&D was one of the
21 settlement agreements that the template was
22 built out of.

1 MR. HIBEY: Okay.

2 MR. SMITH: A&D had a completely
3 separate independent negotiation with the
4 surrounding community regarding concerns that
5 they had mostly because they wanted to build
6 a settlement agreement that would prevent the
7 problems that we experience with Mood/Vita
8 Lounge.

9 MR. HIBEY: A&D has hours of 1:00
10 and 2:00 a.m., correct?

11 MR. SMITH: Yes, sir, that's
12 correct.

13 MR. HIBEY: And they had those
14 hours for years prior to agreeing to it in a
15 settlement agreement, correct?

16 MR. SMITH: No, A&D was a
17 completely new establishment. The property
18 opened about a year and a half ago, a year,
19 year and a half ago, but the space that it was
20 occupying was used more as an art gallery
21 beforehand. It was not a bar. It did not
22 have a liquor license. This is a completely

1 new tenant.

2 MR. HIBEY: Okay. All right. So
3 completely new tenant and they never -- they
4 always had hours of 1:00 and 2:00?

5 MR. SMITH: Yes.

6 MR. HIBEY: Okay. And the same is
7 true for Lost and Found, right? They have --
8 they are new and always had hours of 1:30 and
9 2:30, correct?

10 MR. SMITH: That's correct. They
11 have more generous hours than the standard
12 1:00 to 2:00, because they have also agreed to
13 a more strict noise provision in their
14 settlement agreement. They agree that it
15 constitutes a violation if there is any noise
16 audible in the alleyway from their property.
17 So if they were willing to agree to that much
18 stricter standard, an extra half hour was
19 something that we were more than happy to
20 provide.

21 MR. HIBEY: Okay. Your Exhibit 3
22 lists a total of four license holder, CT

1 license holders, correct?

2 MR. SMITH: Let me count. It
3 appears to be correct.

4 MR. HIBEY: Okay. Bar 7 is open
5 until 2:00 and 3:00, correct?

6 MR. SMITH: It is.

7 MR. HIBEY: And Lost and Found
8 opened with hours of 1:30 and 2:30, right?

9 MR. SMITH: They have not yet
10 opened.

11 MR. HIBEY: They will open with
12 hours of 1:30 and 2:30, right?

13 MR. SMITH: That's what is
14 expected, yes.

15 MR. HIBEY: And A&D has always had
16 hours of 1:00 and 2:00, right?

17 MR. SMITH: That's correct.

18 MR. HIBEY: All right. Thank you.

19 CHAIRPERSON MILLER: Okay. Now,
20 Board questions? Mr. Silverstein?

21 MEMBER SILVERSTEIN: Thank you.

22 Mr. Smith, could you describe, sort of paint

1 a word picture of the noise during a Friday or
2 Saturday evening that might be either a
3 regular Friday or Saturday evening or perhaps
4 one that is bothersome?

5 MR. SMITH: Sure.

6 MEMBER SILVERSTEIN: How it might
7 ebb and flow and how it might affect you?

8 MR. SMITH: Sure. On a regular
9 Friday night and I'm using that term only to
10 describe say the past year with the
11 establishment, on a regular Friday night, the
12 noise from the establishment is actually
13 usually fairly quiet until around 11:00 or
14 12:00. It picks up a little bit around
15 midnight.

16 But typically with my windows and
17 doors closed, I don't hear much of it. If I
18 do, it's low level base. And then towards the
19 end of the evening around, right around 3:00,
20 it's sometimes 2:55, but usually it is right
21 around 3:00, 3:05, the patrons start coming
22 out. They end up clustering in front of Vita

1 Lounge because they do have a valet operation
2 with usually one or two valet operators.

3 And so if there are a number of
4 people who have vehicles parked in valet, they
5 have to wait for them to be able to go and
6 retrieve all the vehicles in the queue before
7 them.

8 The remainder of the customers
9 that are there are either walking back home
10 waiting for cabs or going to their vehicles
11 that they parked themselves, because Metro at
12 that hour is closed.

13 On one of the more bothersome
14 nights, the music will start picking up maybe
15 a little earlier, maybe around 10:30, 11:30.
16 It will get loud enough that it is disruptive
17 by 1:00 a.m., stay that way throughout the
18 remainder of the evening and then when the
19 patrons spill out at 3:00 in the morning,
20 there is loud fighting, yelling. screaming.

21 We have had some of those patrons
22 that have spilled out into fights that come

1 around through the back of the alley. There
2 is parking in the alley behind the
3 establishment, so a number of patrons will
4 park there.

5 You will hear police sirens as the
6 police try and clear the crowds off of 9th
7 Street. Sometimes it involves more than one
8 squad car with the sirens chirping and the
9 sirens are actually often times even louder
10 than the patrons are, so that part also gets
11 very disruptive.

12 And on a bothersome night, it
13 takes until after 3:30, usually 3:45 or so
14 before the crowd starts thinning out and
15 clearly away.

16 MEMBER SILVERSTEIN: The noise
17 from inside Vita Lounge can you hear that
18 inside your apartment when your windows are
19 closed?

20 MR. SMITH: On a number of
21 occasions, yes, and this Board has found that
22 to be conclusive on previous occasions for

1 noise violations. I have a separate free-
2 standing single-family home that has a masonry
3 construction with stucco on the exterior. And
4 as Mimi had mentioned in her testimony, I am
5 about 110, 115 feet away from the
6 establishment.

7 And she has been found guilty by
8 this Board before for having noise that was
9 audible clearly inside my home with all of the
10 windows and doors closed from the
11 establishment, not from the patrons after
12 closing.

13 MEMBER SILVERSTEIN: I recall the
14 licensee has been before us on a number of
15 occasions in the past. And there were people,
16 I believe, in the adjoining building who were
17 having serious noise problems. I believe
18 Inspector Shakoor went over and part of my
19 notes said that he referred -- at one point,
20 and this is in the past.

21 MR. SMITH: Certainly.

22 MEMBER SILVERSTEIN: To the

1 situation as the term he used was unlivable.

2 MR. SMITH: Yes.

3 MEMBER SILVERSTEIN: Have those
4 people moved or to your understanding has the
5 situation improved?

6 MR. SMITH: It has driven one
7 couple from their home. They sold their
8 property to get away from the establishment
9 here.

10 MEMBER SILVERSTEIN: Who was that?

11 MR. SMITH: George and Bettina.
12 They lived in Unit 3, I think. Unit 1 on the
13 front end of the building on the 9th Street
14 side.

15 MEMBER SILVERSTEIN: Do you
16 remember their last names?

17 MR. SMITH: You know, I have them
18 and I'm sure that George would know them as
19 well.

20 MEMBER SILVERSTEIN: Very good.

21 MR. SMITH: But yes, they put
22 their condo on the market and sold at an

1 unfavorable price and cited their primary
2 reason for selling their unit is to get away
3 from this issue. At it's absolutely worst
4 hay-day, there was actually a Mayoral Special
5 Task Force dealing with Mood Lounge and the
6 problems that we had with Mood Lounge.

7 We were able to pack the Kennedy
8 Rec Center with concerned neighbors to hear
9 representatives from the Mayor's Office and
10 from Cathy Lanier herself talking about the
11 problems that we were having with the
12 establishment.

13 So to say that they had some
14 issues in their early years is to down-play it
15 considerably.

16 MEMBER SILVERSTEIN: So it has
17 gotten either better or less worse, depending
18 on whether your cup is empty or full?

19 MR. SMITH: Yes, depending on who
20 you ask.

21 MEMBER SILVERSTEIN: Half empty or
22 half full.

1 MR. SMITH: Depending on who you
2 ask. There has been change. I'm reluctant to
3 call it improvement. One of the things that
4 has always been of great concern to the
5 community has been that for the most part,
6 what was taking place in that establishment
7 was permitted under the terms and restrictions
8 on that license.

9 That is one of the reasons why the
10 community pushed so hard to have the protest
11 group pursue stripping the entertainment
12 endorsement, was because they wanted to remove
13 the capacity for this establishment to ever
14 return back to that level of problem.

15 I was willing to concede that it
16 has improved to some extent since then and so
17 we did not pursue removing the entertainment
18 endorsement from the license, but the hours
19 are critical, because that does limit the
20 amount of time that it can be disruptive to
21 the neighbors, both in its current form and
22 certainly if it ever reverts back to its

1 previous form.

2 MEMBER SILVERSTEIN: Mr. Smith,
3 are the bothersome nights mostly behind us or
4 have we seen any of those recently?

5 MR. SMITH: What concerns me about
6 saying that the bothersome nights are behind
7 us was on the occasion that I mentioned
8 earlier, I believe that was April 20th, when I
9 texted Ms. Beyene and asked for her to modify
10 the sound at her establishment and she
11 refused. She said no. She said that she felt
12 that she was consistent with what her VA
13 required and that she was not willing to make
14 any modifications.

15 That tells me that I'm working
16 with a businessowner that isn't willing to be
17 reasonable. That particular evening, if you
18 walked out all the way to O Street, you could
19 hear the noise from that nightclub at O
20 Street, which is almost a full block away.

21 MEMBER SILVERSTEIN: That was
22 informative, but didn't directly answer the

1 question. Are the bothersome nights, as you
2 call them, more frequent? Have they gone away
3 or are they in the past? Do you still see
4 them? Because I'm moving onto something else
5 and I need a foundation here.

6 MR. SMITH: Yes, six months ago I
7 would have said they were in the past, but
8 over the last couple of weekends, I would say
9 no, that they are not.

10 MEMBER SILVERSTEIN: Is there
11 anything about certain weekends, certain
12 nights in terms of whether it be a crowd, a
13 specific promotion of some sort or anything
14 like that, any type of entertainment that
15 makes you want to say uh-oh, this is going to
16 be a bad night?

17 MR. SMITH: It's my understanding
18 that Ms. Beyene is not permitted to use
19 promoters. That was part of the outcome of
20 the --

21 MEMBER SILVERSTEIN: Okay. I
22 meant a promotion like ladies night or left-

1 handed people's night or something like that.

2 MR. SMITH: No, I don't follow a
3 lot of their marketing, but I can usually make
4 a decision by around 10:30 or 11:00 as to
5 whether or not this night is going to be one
6 of the calmer ones or one of the louder ones.

7 MEMBER SILVERSTEIN: Okay. No
8 further questions.

9 CHAIRPERSON MILLER: Okay. Mr.
10 Short?

11 MEMBER SHORT: Yes. Mr. Smith,
12 good afternoon. Like yourself, I'm quite fond
13 of that neighborhood. I worked in the fire
14 station at the 900 Block of R Street.

15 MR. SMITH: Oh, very nice.

16 MEMBER SHORT: For several years
17 and I have relatives that live in the 900
18 Block of S.

19 MR. SMITH: Very nice. That's a
20 beautiful block, yes.

21 MEMBER SHORT: I remember back
22 from the 50s and 60s before the riots and

1 that's the kind of Washington, D.C. that I'm
2 still waiting for it to come back fully.

3 And so we understand your plight
4 as a citizen and living here in town still.
5 I refuse to leave. I have had a chance to see
6 a lot of cities all over the world and there
7 are none like Washington, D.C.

8 MR. SMITH: I agree.

9 MEMBER SHORT: And I would just
10 like to -- have something to say and just
11 making a statement before I ask my first
12 question to you.

13 MR. SMITH: Sure.

14 MEMBER SHORT: Basically, it's
15 that you mentioned that you know you are not
16 living in the suburbs. And you know that the
17 city has noise, sirens and all those things.
18 And it sounds like you have been trying to
19 work with your neighbors, the business
20 persons.

21 MR. SMITH: Extensively.

22 MEMBER SHORT: Okay. So in the

1 last two years, just the last two, has it got
2 any better, your relationship with the
3 businessowner?

4 MR. SMITH: I wouldn't really say
5 that there has been a substantial change in
6 our relationship. I have always actually been
7 very fond of Mimi and I have always thought
8 that she had a lot of potential at that
9 location to have a wildly successful business.

10 And certainly as someone who works
11 with and advocates for small businesses
12 professionally, that's what I do in my career,
13 I want for all small businesses to be
14 successful. And I have told her a number of
15 times that I think there are ways to have that
16 happen for her in this location.

17 So I wouldn't say that my
18 relationship with her has changed. I was fond
19 of her and the potential for her business a
20 long time ago and I still am.

21 MEMBER SHORT: No further
22 questions, Madam Chair. Thank you, sir.

1 CHAIRPERSON MILLER: Others? Mr.
2 Jones?

3 MEMBER JONES: Thank you, Madam
4 Chair. So I wanted to get back, you mentioned
5 a text message recently on April 20th that you
6 sent and where the owner, basically, told you
7 no.

8 MR. SMITH: Yes.

9 MEMBER JONES: Do you have that
10 text message?

11 MR. SMITH: I do.

12 MEMBER JONES: Do you have it
13 available?

14 MR. SMITH: Yes, if you will give
15 me just one moment.

16 MEMBER JONES: Okay.

17 MR. SMITH: I sent her a message,
18 it was 12:16 a.m. on the 20th. "Mimi, the
19 music in your club is getting pretty loud.
20 Could you" -- "can you please ask the DJ to
21 lower both the volume and the bass? Thanks,
22 Martin."

1 She replied, "Mr. Martin, I am at
2 the back of the building. Also the ABRA, MPD
3 and DCRA Sound Force are outside checking the
4 sound. The volume is exactly how it is
5 supposed to be, sir."

6 I walked outside and said I don't
7 -- "I'm standing out back and I don't see you.
8 And regardless of what MPD or ABRA Sound
9 Control Group says, your voluntary agreement
10 sets a stricter standard. The music is not to
11 be heard inside neighboring residences with
12 the windows and doors closed. My windows and
13 doors are closed and the noise from your club
14 is audible inside my home. That is not
15 permitted within your ABRA license. Please
16 correct the problem."

17 MEMBER JONES: Okay. So in
18 listening to that, it paints a slightly
19 different picture of the no response that I
20 thought you were characterizing earlier.
21 Would you help me better understand why you
22 characterized it as a no?

1 MR. SMITH: Certainly. For her to
2 say the volume was exactly how it is supposed
3 to be, sir, when I have informed her that it
4 is exceeding the standard that is set in the
5 voluntary agreement, I interpret that as a no.

6 MEMBER JONES: Okay. So earlier
7 in your testimony you indicated that you had
8 set a mechanism for her to assess what would
9 be satisfactory to you and that would be to
10 stand outside in the back of her alley and to
11 listen. And if she couldn't hear anything,
12 then that would have met your standard?

13 MR. SMITH: For myself, yes, but
14 I --

15 MEMBER JONES: No, no.

16 MR. SMITH: -- was very clear that
17 it was not --

18 MEMBER JONES: That's the standard
19 that you were referring to? That's what you
20 set --

21 MR. SMITH: Yes.

22 MEMBER JONES: -- as a standard

1 for her for you?

2 MR. SMITH: For myself, but not --

3 MEMBER JONES: So that's all we
4 are talking about now. That's the standard
5 that you set for you?

6 MR. SMITH: Yes.

7 MEMBER JONES: That you gave her.
8 Okay. And she is responding to you in your
9 text message, not to a group, not to anyone
10 else in that text message, just to you,
11 correct?

12 MR. SMITH: Yes.

13 MEMBER JONES: Okay. So she
14 indicated in the text message, it sounded
15 like, that she was at the back of the
16 building. Is that -- did I take that
17 correctly from what you read?

18 MR. SMITH: That was my
19 interpretation of it, yes.

20 MEMBER JONES: Okay. So it
21 sounded like she put forward the effort to
22 adhere to what you indicated to her was a

1 requirement of you to go into the back and
2 check and to hear. And she is indicating to
3 you in that text message that she didn't hear
4 anything or did I mishear you when you read
5 that?

6 MR. SMITH: I think you --

7 MEMBER JONES: Can you read that
8 again?

9 MR. SMITH: -- might have
10 misheard. Let me read what she wrote again.

11 MEMBER JONES: Okay.

12 MR. SMITH: "Mr. Martin, I am at
13 the back of the building. Also the ABRA, MPD
14 and DCRA Sound Force are outside checking the
15 sound. The volume is exactly how it is
16 supposed to be, sir."

17 MEMBER JONES: Okay.

18 MR. SMITH: When I spoke with the
19 ABRA Task Force and they came to my home, they
20 said that that was --

21 MEMBER JONES: Are you still
22 reading the text?

1 MR. SMITH: No.

2 MEMBER JONES: Okay. When did you
3 stop reading the text?

4 MR. SMITH: When I spoke with the
5 ABRA Task Force and they came to my home that
6 evening, they told me that that was not true,
7 that they were not with her when she had sent
8 me that message, that they had been there
9 several hours earlier, but that they were not
10 there at that point in time, which she, in my
11 interpretation, was saying that she was out
12 there with them at that point.

13 I walked out of my house and
14 looked and saw no one, so she was saying that
15 she had met with them and that everything was
16 fine, but in actuality that wasn't the case.

17 MEMBER JONES: Okay. So you are
18 basically saying that even though her response
19 to you indicated she was doing certain things,
20 you believe that she was lying?

21 MR. SMITH: I'm not going to use
22 the word lying. I do think that she was

1 either misinformed or being misleading, yes.

2 MEMBER JONES: Okay. I'm having a
3 challenge with that because I'm taking a
4 totally different read on the response to the
5 text message. I don't find it to be totally
6 yes, I'm going to do whatever you tell me to
7 do. But I also don't see it as this abrupt
8 I'm this uncooperative owner that is not going
9 to do or not willing to bend on anything.

10 So I'm trying to get a feel for
11 your characterization of it. But basically,
12 it sounds like you are saying that there is
13 some other peripheral information in there
14 such as you conferred with a third-party
15 individual, i.e., the ABRA people and they
16 said we weren't with her. So therefore, you
17 are feeling like she wasn't representing
18 herself in a truthful fashion in her response
19 to you and/or desire to address the issue that
20 you raised. Is that what I'm pulling from
21 what you are saying?

22 MR. SMITH: It's not built into

1 what has been a larger portion of the problem
2 from the very beginning.

3 MEMBER JONES: Okay. So it's --

4 MR. SMITH: Which is --

5 MEMBER JONES: -- all encompassing
6 of everything, not just this finite you send
7 her a text and she responds in accordance with
8 what she understands to be -- well, she
9 responds. I'll put it that way.

10 MR. SMITH: Yes. It's that
11 dealing with volume issues and noise has an
12 incredibly simple totally free easy way to
13 handle it. You turn the knob down and you
14 reduce the volume.

15 I have never understood why we
16 have had ongoing problems over what should be
17 such a simple component of operating a
18 business. If there is a problem and you can
19 deal with it immediately, why would you not do
20 that? And certainly for the first two years
21 that she was in operation, it was rare that we
22 got any type of response at all.

1 We would complain. We would send
2 ABRA over there and the first thing that we
3 would hear that was any type of response to it
4 was once it got all the way to the Board.

5 MEMBER JONES: Okay. Understood.
6 So but in the, I guess, more near term, i.e.,
7 the more recent activities, so I understand
8 you keep going back to the two years ago and
9 how horrible she was back then.

10 So that clearly indicates to me
11 that there has been some improvement, because
12 she is not as horrible as she was two years
13 ago. That's what I'm taking from what it is
14 you are telling me, because you constantly go
15 back to the two years ago of how horrible she
16 was.

17 And so I just want to make --

18 MR. SMITH: Sure.

19 MEMBER JONES: -- sure I'm
20 following, because it's -- I'm trying to stick
21 to, okay, right now there are some issues,
22 there are some challenges, right? And those

1 challenges are what you have articulated in
2 terms of noise, both from patrons as well as
3 their establishment, as you perceive them.

4 And I'm trying to weed out emotion
5 from the facts.

6 MR. SMITH: Sure.

7 MEMBER JONES: All right. So I'm
8 trying to understand right now, in response to
9 that text message, it sounded like she was
10 trying to adhere to what it is you had
11 defined, based on what she is saying anyway,
12 if she was lying, then that is a whole
13 different discussion, right?

14 But assuming she is telling the
15 truth, she went out to the back of the
16 building and she believed that the sound was
17 where it should have been, based on the
18 requirements that you kind of laid out.

19 MR. SMITH: If that's what she is
20 saying that she did, and that's what you are
21 interpreting from that, then she was
22 definitely lying. I was standing there and

1 she never came out of the back of the
2 building.

3 MEMBER JONES: Okay. So you are
4 basically saying that you believe that she was
5 lying in her response there?

6 MR. SMITH: I hesitate to use that
7 term, but since this is the third or fourth
8 time then, yes, I will --

9 MEMBER JONES: All right.

10 MR. SMITH: -- accept that term.

11 MEMBER JONES: Cool. So then from
12 there you spoke with ABRA Investigators that
13 same night?

14 MR. SMITH: I did.

15 MEMBER JONES: Who were those ABRA
16 Investigators?

17 MR. SMITH: I don't have their
18 information with me, but I do have one of them
19 who wanted to get copies of the text messages
20 that I had just sent. Investigator Suero.

21 MEMBER JONES: Suero.

22 MR. SMITH: I'm probably really

1 mispronouncing that last name and I apologize.

2 MEMBER JONES: Okay.

3 MR. SMITH: S-U-E-R-O.

4 MEMBER JONES: And what time was
5 this when you spoke to them?

6 MR. SMITH: That was approximately
7 an hour later at 1:13 in the morning.

8 MEMBER JONES: Was the
9 establishment still in operation?

10 MR. SMITH: Yes, but after I had
11 requested that they deal with the volume and
12 notified them that I was contacting ABRA and
13 having the Inspectors come out, there was a
14 reduction, slight reduction in the volume.

15 MEMBER JONES: Oh, that's a very
16 important point. So you had ABRA
17 Investigators come over to your establishment
18 after you got the response from the owner
19 indicating that she thought the music was at
20 the appropriate level, but you responded
21 saying I don't think so, I'm calling ABRA?

22 MR. SMITH: Yes.

1 MEMBER JONES: Was that the
2 complaint that you filed on the 20th?

3 MR. SMITH: Yes, it was.

4 MEMBER JONES: Okay. So when ABRA
5 Investigators came over, did they find a noise
6 issue?

7 MR. SMITH: They could hear it
8 very clearly in the alley after I had notified
9 her that I was contacting ABRA and having them
10 come out, she did reduce the volume enough
11 that with all of my windows and doors closed,
12 you couldn't very clearly hear it in my house.

13 MEMBER JONES: So that ABRA --

14 MR. SMITH: It was --

15 MEMBER JONES: -- Investigators
16 were not able to substantiate your complaint?

17 MR. SMITH: Not for mine. I don't
18 know if there were others that evening.

19 MEMBER JONES: I mean that night?
20 On that night at 1:13 or whatever time you
21 said they came by, they were not able to
22 substantiate your complaint?

1 MR. SMITH: They were able to
2 substantiate that there was a significant
3 amount of noise coming out of the
4 establishment. They were not able to
5 substantiate that it violated the terms of the
6 voluntary agreement.

7 MEMBER JONES: Were they able to
8 substantiate that it was breaking the Code,
9 Law that you mentioned earlier?

10 MR. SMITH: I don't know.

11 MEMBER JONES: About not being
12 able to hear --

13 MR. SMITH: That's a separate
14 level from what is in the voluntary agreement,
15 so I'm not sure. You would have to ask them.

16 MEMBER JONES: So what did they
17 confirm to you that they were able to
18 substantiate?

19 MR. SMITH: That there was a
20 considerable amount of noise from the music
21 coming from that nightclub.

22 MEMBER JONES: Okay. And what did

1 they say they were going to do?

2 MR. SMITH: They said that they
3 would follow-up with the process.

4 MEMBER JONES: Did they indicate
5 that they felt that it was a violation of the
6 SA or the VA?

7 MR. SMITH: No. They said that
8 they did not feel that it was consistent with
9 the -- a violation of the voluntary agreement--
10 -

11 MEMBER JONES: Okay.

12 MR. SMITH: But that they would
13 proceed to see if it was a violation in
14 another way.

15 MEMBER JONES: Got it. So they
16 confirmed with you that it wasn't a violation
17 of the SA as they perceived it?

18 MR. SMITH: Yes.

19 MEMBER JONES: Okay.

20 MR. SMITH: Both language and the
21 SA specifies clearly audible in a home.

22 MEMBER JONES: Correct.

1 MR. SMITH: With the windows and
2 doors closed.

3 MEMBER JONES: So based on that
4 complaint on April 20th, ABRA appeared, they
5 showed up, they confirmed that it wasn't a
6 violation of the SA and they proceeded down
7 whatever the path was that they indicated to
8 you that -- based on your understanding, which
9 was to see if there was some other way that
10 they could be found in violation of some other
11 thing? Is that what I'm taking from what you
12 just said?

13 MR. SMITH: That they would
14 proceed with whatever else it was that they
15 do. I'm not particularly familiar with the
16 Task Force and I'm not particularly familiar
17 with their process or procedure.

18 MEMBER JONES: Got it.

19 MR. SMITH: But that they would
20 proceed onward with that. They did say that
21 next time if I wanted to call in, I probably
22 shouldn't warn the bar owner that I was going

1 to do that, because once someone has a heads
2 up and an hour to be able to fix a problem
3 before they are about to get hit with a big
4 fine, they tend to do that.

5 MEMBER JONES: Okay. Did you
6 follow-up with the owner after you realized
7 that the noise had been reduced or after ABRA
8 had shown up?

9 MR. SMITH: No.

10 MEMBER JONES: So you don't know
11 whether or not she took action to address the
12 problem and what action was taken?

13 MR. SMITH: No, I don't.

14 MEMBER JONES: You do know that
15 the noise was less than it was when you
16 initially sent the text?

17 MR. SMITH: Yes.

18 MEMBER JONES: So is it unfair to
19 characterize her actions as taking action in
20 response to your complaint?

21 MR. SMITH: I would say yes. She
22 didn't take action in response to my

1 complaint. She took action in response to my
2 notification that ABRA was going to be brought
3 out and that I would proceed to get a
4 violation against her.

5 MEMBER JONES: And you know that
6 how?

7 MR. SMITH: Because between when I
8 filed the complaint and got a negative
9 response and when I notified her that I was
10 calling ABRA and ABRA came out, I got a
11 positive response. They reduced the volume.
12 So going purely off of the complaint, there
13 was no change. There was no reduction in
14 volume. There was the assessment from her
15 that she was where she felt she needed to have
16 the volume to be.

17 When I notified her that I was
18 contacting the ABRA Task Force and having them
19 come out to have them to an analysis of it,
20 then the volume was reduced.

21 MEMBER JONES: Was that in a
22 separate text exchange or was it a sequential

1 conversation that you were having? You said
2 hey, there is a problem. She responded no, I
3 don't really think there is a problem. And
4 you said well, I think there is. You are in
5 violation of the SA and I'm telling on you.

6 MR. SMITH: Pretty much.

7 MEMBER JONES: Okay.

8 MR. SMITH: Yes, that was in the
9 original exchange that I read.

10 MEMBER JONES: Got it. So I'm
11 trying to gather, at what point was she
12 responding to an independent threat of
13 contacting ABRA or contacting the Task Force
14 or whatever the case may be? How are you
15 making that distinction from just the general
16 text message that you sent about there being
17 a concern about your problem and then
18 subsequently there being action taken to
19 reduce that noise?

20 MR. SMITH: If I express a concern
21 to you about something that would result in an
22 action on your part, and I get a response from

1 you that says I don't really find any validity
2 with that concern and so I am not going to
3 take this action.

4 And then 20, 30 minutes later, I
5 notify you that I am planning on taking action
6 on my own that could result in a penalty for
7 you and then magically right at that moment,
8 the action that I was looking for from you
9 takes place. I see a correlation between the
10 two and I assume a causality.

11 MEMBER JONES: Got it.

12 MR. SMITH: But you are right, I
13 guess, there is no way to prove one way or the
14 other.

15 MEMBER JONES: No, it's a
16 reasonable assumption. I didn't realize there
17 was 20 minutes from the time that she
18 responded to the time that you told her that
19 you were calling ABRA.

20 MR. SMITH: Yes.

21 MEMBER JONES: So can you read the
22 timestamps?

1 MR. SMITH: I will take a look.

2 ABRA was there at 1:13. And actually there
3 isn't timestamps. There is one for the
4 beginning of the exchange at 12:16, but there
5 is no timestamp on her response or the other
6 subsequent responses.

7 MEMBER JONES: So that's a typical
8 iPhone app?

9 MR. HIBEY: Just push over to the
10 side. The timestamps are on there. You've
11 got to swipe across.

12 MR. SMITH: It's not doing
13 anything for mine.

14 MR. HIBEY: Do you have an iPhone?

15 MR. SMITH: Yes.

16 MR. HIBEY: I mean, the timestamps
17 are on there.

18 MEMBER JONES: It's up to him,
19 yes. If he can't -- he has to answer these
20 questions, in my opinion, unless the Chairman
21 is allowing that to take place.

22 CHAIRPERSON MILLER: They are your

1 questions.

2 MEMBER JONES: Yes, thank you.

3 CHAIRPERSON MILLER: That's fine.

4 Go ahead.

5 MEMBER JONES: So but there was an
6 initial when, at 12:16?

7 MR. SMITH: 12:16 and then to
8 Inspector or Investigator Suero at 1:13.

9 MEMBER JONES: 1:13?

10 MR. SMITH: Approximately an hour
11 later.

12 MEMBER JONES: Okay. And you
13 believe there -- your testimony is that there
14 was a delay of 20 minutes from her response to
15 you?

16 MR. SMITH: I would say.

17 MEMBER JONES: And you are telling
18 her that you are going to contact ABRA?

19 MR. SMITH: I would guess it was
20 in that ballpark, somewhere between 10 and 20
21 minutes, yes, because I went outside after I
22 received her text message again to see if she

1 was out there, because I had been out there
2 when I sent my original text message. I
3 wanted to go and verify that the noise wasn't
4 coming from one of the neighboring bars, so I
5 walked around along the back of the side -- or
6 the back side of the bar to verify that it
7 wasn't coming from A&D and that it wasn't
8 coming from Thally, but that it was coming
9 from this establishment.

10 MEMBER JONES: At what time did
11 the sound reduce?

12 MR. SMITH: I would say --

13 MEMBER JONES: The time frame that
14 ABRA showed up at 1:13?

15 MR. SMITH: -- around -- I would
16 say a few minutes before 1:00.

17 MEMBER JONES: A few minutes
18 before 1:00? Okay.

19 MR. SMITH: That is to the best of
20 my recollection. That is not in any way a
21 firm number.

22 MEMBER JONES: All right. Has

1 there been any other problematic nights since
2 April 20th?

3 MR. SMITH: Yes, there was one
4 just a couple of weeks ago where the valet for
5 the organization or for her establishment
6 parked up the entire side of Naylor Court
7 including blocking my own parking space.

8 MEMBER JONES: I'm sorry,
9 specifically to noise emanating from the
10 establishment?

11 MR. SMITH: Noise was also a
12 substantial problem that night.

13 MEMBER JONES: Okay. And was it
14 any different than the noise on the 20th?

15 MR. SMITH: I would say it was
16 worse.

17 MEMBER JONES: It was worse?

18 MR. SMITH: I had had enough that
19 I decided to leave my home.

20 MEMBER JONES: All right. On that
21 night, why didn't you -- you complained on
22 April 20th.

1 MR. SMITH: I did.

2 MEMBER JONES: You sent her a
3 text.

4 MR. SMITH: I did.

5 MEMBER JONES: You called ABRA.
6 And it resulted in a positive effect, although
7 delayed, which was reduction in noise.

8 MR. SMITH: I did.

9 MEMBER JONES: Okay. Why didn't
10 you follow that same course of action when you
11 were met with positive results when you
12 followed it the first time on April 20th?

13 MR. SMITH: Because that was
14 probably the first time that I was met with a
15 positive result from that course of action.

16 MEMBER JONES: Great. Even more
17 of a reason. So you met with a positive
18 result on April 20th. The next time you had
19 an issue, why didn't you follow that same
20 course of action and notify the owner or
21 follow the course of action recommended by
22 ABRA, which was not warn the owner and just

1 call ABRA, so that you could actually
2 establish and substantiate a violation?

3 MR. SMITH: Because this has been
4 going on for years. And I'm tired and some
5 nights I don't feel like going through the
6 process of calling ABRA and waiting an hour
7 and having everyone come and come through my
8 home and filing a report that doesn't go
9 anywhere.

10 Filing a report that ends up
11 sitting on some desk somewhere for a year and
12 then nothing happens. At a certain point, you
13 get worn down so much as a resident through
14 this process. And I just looked at it and I
15 thought to myself, you know what, the absolute
16 best case scenario, the best outcome that I
17 can have is a noise violation that means that
18 I'm taking another day off work and coming
19 down here and testifying and going through
20 this process again or I could just call one of
21 my friends and ask if I can go over there for
22 a few hours and play cards or I can just go

1 down to the movie theater and watch a movie
2 and not deal with any of that.

3 MEMBER JONES: So is it --

4 MR. SMITH: And that's what I
5 chose.

6 MEMBER JONES: -- fair to say that
7 on that night the -- you did not notify the
8 owner that there was a problem?

9 MR. SMITH: No.

10 MEMBER JONES: Okay. So on that
11 night, the owner did not have an opportunity
12 to cure, based on notification from you
13 anyway?

14 MR. SMITH: No. It has gotten
15 easier to just flee the problem.

16 MEMBER JONES: You indicated that
17 there is an issue with crowd noise.

18 MR. SMITH: Most nights.

19 MEMBER JONES: Has that gotten
20 worse or better over the last year?

21 MR. SMITH: I would say it has
22 been consistent over the last year.

1 MEMBER JONES: Consistent over the
2 last year?

3 MR. SMITH: Yes.

4 MEMBER JONES: And what -- do you
5 feel like that is a problem that can be
6 addressed?

7 MR. SMITH: Yes.

8 MEMBER JONES: How?

9 MR. SMITH: I think it is twofold.
10 First is having a last call that is before
11 your closing hour.

12 MEMBER JONES: Okay.

13 MR. SMITH: Having a last call
14 that is earlier allows people to filter out
15 more slowly rather than having the lights come
16 on and music stops at 2:58 and everyone gets
17 shoved to the door.

18 MEMBER JONES: Right.

19 MR. SMITH: I would personally
20 prefer to see the valet operation cease there,
21 but that isn't something that we are pursuing,
22 but I think the valet is a significant part of

1 the problem.

2 MEMBER JONES: Okay.

3 MR. SMITH: The --

4 MEMBER JONES: That's a
5 significant part of the crowd noise problem?

6 MR. SMITH: Yes.

7 MEMBER JONES: Got it. Okay.

8 MR. SMITH: You know, but that
9 being said, I don't want to interfere with her
10 ability to try and run her business if she
11 thinks that having the valet operation is
12 important, then it is important, so I let that
13 go. I think having a stronger police presence
14 would be more helpful.

15 During some of the earlier years,
16 there was a very strong police presence that
17 was there at night when they closed and that
18 led people to disperse more quickly.

19 MEMBER JONES: Okay.

20 MR. SMITH: You know, I think more
21 importantly, if they were to adopt the same
22 standards that the other establishments in the

1 community have, we would have a much, much
2 reduced problem with crowd control and noise
3 when they let out at the end of the night.

4 If on a Friday or a Saturday
5 night, their last call is at 1:30, that gives
6 people who want to keep drinking an hour and
7 a half to go find somewhere else to keep doing
8 that. And they will go there quickly, because
9 they are wasting drinking time if they are on
10 their way to go and get to that establishment
11 for that purpose.

12 For people who want to enjoy their
13 evening and then call it a night by 2:00, they
14 are leaving. The level of intoxication at a
15 lot of places at 2:00 versus 3:00, that last
16 hour does make a difference. And, you know,
17 I think what I and the neighbors and the ANC
18 have talked about extensively in the Blagden
19 Alley/Naylor Court Association is that we want
20 a vibrant mixed-use neighbor.

21 We want bars and restaurants. We
22 want evening entertainment and nighttime

1 entertainment, but there is a difference
2 between nighttime and nightlife. Nightlife is
3 not something that we have ever pursued.
4 Nightlife is not something that anyone in the
5 neighborhood has ever wanted. Nightlife is
6 not something which is compatible with a
7 Residential District on the back side of your
8 building.

9 A nighttime establishment,
10 somewhere that does operate that way like A&D,
11 like Thally, like Chercher, like The American,
12 like Lost and Found, all these other
13 establishments, they are able to be very
14 successful. They still close by 2:00. And
15 they are a lot quieter.

16 Combined, they probably have a
17 bigger occupancy than what Mimi has with Vita
18 Lounge, but those patrons are a lot less
19 disruptive. I don't know if it's something
20 about the fact that it is 2:00 versus 3:00,
21 but somehow the people who leave at 2:00 from
22 the other establishments tend to do so fairly

1 quietly. There are some who are loud, but
2 tend to be fairly quiet.

3 But the ones at 3:00 in the
4 morning and not just from this one
5 establishment, I certainly -- I was in D.C.
6 throughout my entire 20s, I had my fair share
7 of being out at 3:00 in the morning at various
8 different places. The people who left from
9 those establishments, myself probably
10 included, were very loud.

11 There is something about that very
12 end cap hour where you -- that's the hour
13 where if you are going to have one too many,
14 you have that one then. That's the hour where
15 if you are going to be disruptive, it's from
16 that. So I think pulling back --

17 MEMBER JONES: So let me try to --

18 MR. SMITH: -- would resolve that
19 problem.

20 MEMBER JONES: So it's not a
21 matter -- just to make sure I'm clear. In all
22 of what you said, what I'm hearing is it's not

1 so much a matter of having a last call that is
2 some fixed number of minutes prior to your
3 closing, it's really closing earlier that is
4 what you are really saying is the solution to
5 crowd noise?

6 MR. SMITH: What we have found in
7 the neighborhood to be effective is the
8 combination of the two, they are both critical
9 components. The last call does two main
10 things. One, it allows people to leave more
11 slowly, because after they have finished
12 drinking, they are unable to get another one.
13 There is not really any point in waiting.

14 Another one that has been a huge
15 problem in the past from this establishment,
16 that I guess it's due to the fact that now she
17 says that she is doing last call a half hour
18 before she closes, is public urination. If
19 you have been cut off and you are not drinking
20 any more, half an hour before you leave, you
21 have a half an hour to find a bathroom that is
22 indoors with plumbing and not, you know, my

1 front steps.

2 So that extra half hour there,
3 that has made a big impact there with the
4 other establishments as well.

5 MEMBER JONES: Hold on. Just let
6 me make sure I'm following your response. Are
7 you saying that there is a higher instance of
8 public urination as a result of the owner now
9 having last call a half hour prior to closing?

10 MR. SMITH: No, sir.

11 MEMBER JONES: Okay.

12 MR. SMITH: I'm saying that I am
13 assuming it is lower for that reason.

14 MEMBER JONES: It's lower?

15 MR. SMITH: It has been lower
16 recently.

17 MEMBER JONES: Okay.

18 MR. SMITH: I wasn't aware that
19 she was closing a half hour -- or that she had
20 last call a half hour earlier.

21 MEMBER JONES: Okay.

22 MR. SMITH: But I would speculate

1 that that would be why.

2 MEMBER JONES: All right. So I
3 was looking at your sheet, Exhibit 3, from
4 what you provided in Protestant's 3. And I
5 was just noticing that you have there are
6 three establishments -- well, it looks like
7 two establishments other than -- no, sorry,
8 three establishments.

9 Well, two establishments that have
10 a last call that is 30 minutes prior to close,
11 but they also have earlier closing hours.

12 MR. SMITH: Yes, that's correct.

13 MEMBER JONES: Okay. So what
14 would you want Vita Lounge to do from an hour
15 standpoint? Just to make sure I'm clear.

16 MR. SMITH: What we had proposed--

17 MEMBER JONES: At closing time.

18 MR. SMITH: -- was -- their
19 closing time is currently 2:00 and 3:00.

20 MEMBER JONES: And just to make
21 sure I'm clear, I don't really want to hear
22 what you proposed. I just want to know what

1 it is that -- I really don't want to get into
2 negotiations or what's in the SA or what terms
3 were rejected. So, please, don't talk to me
4 in that sense.

5 Just say hey, this is what I would
6 like to see, whether you can speak from your
7 standpoint or as a representative of some
8 larger group.

9 MR. SMITH: I and I believe the
10 rest of the group that I represent would like
11 to see the hours reduced by one hour.

12 MEMBER JONES: Okay.

13 MR. SMITH: So instead of 2:00 and
14 3:00, 1:00 and 2:00. And last call half an
15 hour prior to that time.

16 MEMBER JONES: Got it.

17 MR. SMITH: So last call then
18 would be 12:30 and 1:30.

19 MEMBER JONES: All right. And you
20 feel like that would fix the crowd noise
21 problem?

22 MR. SMITH: I think that it is the

1 best hope, yes.

2 MEMBER JONES: Okay. And you
3 didn't mention parking outside of the fact
4 that you said that the valet blocked your
5 space one night earlier this year.

6 MR. SMITH: Yes.

7 MEMBER JONES: I won't say exactly
8 when. Is parking a major issue?

9 MR. SMITH: Parking is an issue in
10 any urban neighborhood. I don't know how much
11 of that is attributable specifically to this
12 establishment.

13 MEMBER JONES: Cool. Check.
14 That's all I needed. All right. And in terms
15 of the inside noise, so if Vita Lounge were
16 able to establish soundproofing in such a
17 manner that it met your baseline, I'm talking
18 of you, your baseline requirement that oh,
19 well, as long as I can't hear it in the alley,
20 I'm content.

21 If Vita Lounge was able to install
22 soundproofing that achieved that objective,

1 then I would assume, based on your testimony,
2 that noise emanating from the establishment,
3 i.e., low level bass, music, etcetera, would
4 not be a problem for you?

5 MR. SMITH: I would assume that.

6 MEMBER JONES: Okay.

7 MR. SMITH: But I would need to
8 see what type of soundproofing they had
9 installed. Like I said, I work with a lot of
10 restaurants and a lot of bars in my
11 professional capacity and there is a wide
12 variety in the quality and quantity of
13 soundproofing that different owners would
14 consider soundproofed.

15 MEMBER JONES: So let's look at it
16 from the standpoint of a third-party
17 professional sound engineer is saying that
18 this is the soundproofing measures or these
19 are the soundproofing measures that you need
20 to take.

21 MR. SMITH: Yes.

22 MEMBER JONES: And those were the

1 measures that Vita Lounge took.

2 MR. SMITH: Yes.

3 MEMBER JONES: With the objective
4 being to achieve your desired objective, your
5 desired goal, which is not to be disturbed in
6 your home, really is what it boils down to,
7 right?

8 MR. SMITH: Sure.

9 MEMBER JONES: So if that was
10 something the Lounge was willing to do, the
11 owner was willing to sign up for and do, then
12 would that be acceptable for you, if it
13 achieved that objective?

14 MR. SMITH: Acceptable for what
15 purpose?

16 MEMBER JONES: For the purpose of
17 you not having a complaint or an issue with
18 this establishment being in operation. As
19 long as you can't hear it inside of your
20 establishment and we're talking strictly just
21 about the noise.

22 MR. SMITH: Sure.

1 MEMBER JONES: All right. We're
2 not talking about the crowds. Not talking
3 about parking. We're talking about the noise.

4 MR. SMITH: Sure.

5 MEMBER JONES: So what I'm trying
6 to figure out is it seems as if it's not an
7 engineering problem that can't be solved.

8 MR. SMITH: I agree.

9 MEMBER JONES: Right? So from
10 that standpoint, if Vita Lounge was willing to
11 take on a sound engineer and hire them and
12 contract to implement the necessary
13 soundproofing measures to achieve that
14 objective, would you have a problem with it
15 being in operation to the full extent of the
16 hours that they currently have? I want to
17 make sure that's clear.

18 MR. SMITH: If it were properly
19 soundproofed, the noise would not be an issue
20 from the inside of the establishment?

21 MEMBER JONES: Yes, that's all I'm
22 talking about. That's all I want to know

1 about the noise.

2 MR. SMITH: That being said,
3 \$14,000 or \$15,000 or \$16,000 to soundproof
4 against one or two of the walls on the second
5 floor of the establishment? That is not going
6 to come anywhere near where they need to be,
7 so --

8 MEMBER JONES: That is your
9 opinion and that's fine. I don't know that
10 you are or you aren't, so let me ask, are you
11 an engineer?

12 MR. SMITH: I'm not an engineer,
13 no.

14 MEMBER JONES: Are you a sound
15 expert?

16 MR. SMITH: No. I'm --

17 MEMBER JONES: Okay.

18 MR. SMITH: -- someone who works
19 with small businesses on soundproofing issues
20 fairly extensively.

21 MEMBER JONES: I'm sorry, so you
22 don't have an expert opinion on it, you just

1 have experience based on --

2 MR. SMITH: That's correct.

3 MEMBER JONES: -- your work?

4 MR. SMITH: It's a professional
5 opinion, not an expert opinion.

6 MEMBER JONES: All right. Gotcha.
7 So if we had a professional sound engineer
8 that said it could be done with these changes
9 and those changes happen to be \$17,000 and it
10 achieved that objective, all you care about is
11 that you don't hear noise in your home, right?

12 MR. SMITH: I would tell him that
13 I would believe it when I heard it, but that,
14 yes, that is pretty much my concern.

15 MEMBER JONES: Understood. So
16 thank you. Thank you, Madam Chair.

17 CHAIRPERSON MILLER: Okay.
18 Others? Mr. Silverstein?

19 MEMBER SILVERSTEIN: Thank you.
20 Have you any indication that there is a
21 reimbursable detail out there Friday or
22 Saturday nights? Are you familiar with what

1 an RDO is?

2 MR. SMITH: I am. I know that
3 they have had one at various points and it
4 sounds as if that is the Treasury police that
5 she is contracting with, at this point, that
6 they would be --

7 MEMBER SILVERSTEIN: Now, I don't
8 understand what Treasury police are, but --

9 MR. SMITH: I believe these would
10 be off-duty police officers who are police in
11 their official capacity with Treasury, but in
12 their off-duty capacity are working with her
13 security contractors or consultants of some
14 kind.

15 And there is a police presence
16 outside whether or not that is a reimbursable
17 detail or whether or not that is just the
18 allocation of resources from our local police
19 department. I have no specific knowledge one
20 way or the other.

21 MEMBER SILVERSTEIN: Now, often in
22 these cases an RDO, which are off-duty police

1 who are brought in and paid in part by
2 taxpayer subsidy, but in part by the
3 establishment, are outside and they provide a
4 presence to keep quiet -- peace, order and
5 quiet can be a help.

6 MR. SMITH: Yes. We have seen
7 those in the past at this location.

8 MEMBER SILVERSTEIN: You don't
9 know what the current situation is? We can
10 clear that up if you don't.

11 MR. SMITH: Yes, I don't know if
12 that is currently what she has as the
13 arrangement or not.

14 MEMBER SILVERSTEIN: Where is the
15 ANC on this? Why aren't they here?

16 MR. SMITH: The ANC isn't here
17 because of a technical misunderstanding. I
18 had planned on attending as representing the
19 group of five or more. The ANC was also aware
20 that they were a protestant against the
21 licensee in this case. They failed to attend
22 one of the hearings that we had earlier, under

1 the impression that my presence as a member of
2 the group of five and also the ANC's
3 representative on the Alcohol Policy Committee
4 was sufficient.

5 It was later determined that that
6 wasn't sufficient because the committee
7 assignment is a separate assignment from the
8 elected ANC official. They sought to be party
9 to the mediation. Ms. Beyene declined to
10 allow them to participate in the mediation.
11 But we had expressed with them and they are
12 100 percent on board that whatever the SA is
13 that we reach, we would have them be the one
14 who enters into the agreement, since,
15 obviously, the ANC has more permanence than a
16 group of five or more.

17 MEMBER SILVERSTEIN: Thank you.
18 No further questions.

19 CHAIRPERSON MILLER: Okay.
20 Others? All right. I have a few.

21 Licensee's Exhibit No. 22 --

22 MR. SMITH: Yes.

1 CHAIRPERSON MILLER: -- okay.

2 Your house is the blue house, right?

3 MR. SMITH: Yes.

4 CHAIRPERSON MILLER: Okay. And
5 what is the building next to?

6 MR. SMITH: Currently, that's an
7 empty shell. It's just that front facade and
8 a roof.

9 CHAIRPERSON MILLER: Is it empty?

10 MR. SMITH: The other walls are
11 not present.

12 CHAIRPERSON MILLER: Okay. And
13 then this is residential or commercial?

14 MR. SMITH: It's C-2-A Zoned.
15 It's a studio for Darryl Carter Design. He
16 has meeting space back there. It could
17 operate as a residence. It has a kitchen. It
18 has a bathroom.

19 CHAIRPERSON MILLER: Okay.

20 MR. SMITH: But he uses it for
21 commercials.

22 CHAIRPERSON MILLER: But nobody is

1 there in the evening who would be disturbed
2 by --

3 MR. SMITH: Not usually. His
4 employees are usually gone by the time that
5 the establishment opens.

6 CHAIRPERSON MILLER: Okay. So
7 then other nearby residents, are they across
8 from the back of Penthouse Nine?

9 MR. SMITH: So on this one, beyond
10 me --

11 CHAIRPERSON MILLER: What are we
12 looking at for the record?

13 MR. SMITH: Oh, 22.

14 CHAIRPERSON MILLER: 22. Okay.

15 MR. SMITH: Beyond myself, you can
16 see 910 O Street. The back of that
17 establishment faces the side of my house. You
18 can see the other residential properties along
19 O that are across O Street on the north side.
20 There is also another residential property on
21 the south side of that alley.

22 CHAIRPERSON MILLER: So when you

1 are talking about O Street, I'm sorry, but I'm
2 not as familiar with it.

3 MR. SMITH: Oh, I'm terribly
4 sorry.

5 CHAIRPERSON MILLER: Are you
6 talking about where those --

7 MR. SMITH: So this is --

8 CHAIRPERSON MILLER: -- two cars
9 are, the red and the blue?

10 MR. SMITH: Yes.

11 CHAIRPERSON MILLER: Is that O
12 Street?

13 MR. SMITH: The red Prius and the
14 green Taurus station wagon that are down
15 there.

16 CHAIRPERSON MILLER: Okay. So --

17 MR. SMITH: Those are on O.

18 CHAIRPERSON MILLER: Okay. So
19 that's a residence that they are in front of.

20 MR. SMITH: Yes. All of those are
21 residential.

22 CHAIRPERSON MILLER: And then it

1 comes back to this alley, are there residences
2 on this alley?

3 MR. SMITH: Yes. Everything that
4 is on the opposite side of the alley from my
5 house if R-4 Zoned.

6 CHAIRPERSON MILLER: Okay. So
7 there is --

8 MR. SMITH: So the majority of
9 those are either the residences along O
10 Street, there are some in independent in the
11 alley that are carriage houses for the O
12 Street properties and then there are some of
13 the O Street properties that connect all the
14 way through. There is another central alley
15 that goes through that way.

16 CHAIRPERSON MILLER: Well, so if
17 you look at Exhibit 22, and on the left hand
18 side across from your house is a car.

19 MR. SMITH: Yes, ma'am.

20 CHAIRPERSON MILLER: Okay. Is
21 that a residence that the car is parked next
22 to?

1 MR. SMITH: There are two
2 residences there. One of them is currently
3 being used as a photography studio, but there
4 is a residence upstairs.

5 CHAIRPERSON MILLER: Okay. And
6 then we can't see any more buildings coming
7 towards us as we look at this picture.

8 MR. SMITH: The next building
9 forward is the DC Archives building.

10 CHAIRPERSON MILLER: Okay.

11 MR. SMITH: It's a large historic
12 stable, but it's used for Government purpose.

13 CHAIRPERSON MILLER: So that's my
14 question. Are there residences across from
15 the back of Penthouse Nine?

16 MR. SMITH: No.

17 CHAIRPERSON MILLER: No.

18 MR. SMITH: However, if you look
19 in --

20 CHAIRPERSON MILLER: Well, you
21 have to be -- okay. We just have to get you
22 on the mike when you talk.

1 MR. SMITH: Yes.

2 CHAIRPERSON MILLER: Okay.

3 MR. SMITH: If you look in
4 Photograph 26, you can see the gray property
5 here, that is Vita Lounge.

6 CHAIRPERSON MILLER: Right.

7 MR. SMITH: This brick property
8 that is beside is --

9 CHAIRPERSON MILLER: Right.

10 MR. SMITH: -- that is the Nine
11 Condominium. And then looking back at Exhibit
12 22, the red brick stable that you see with the
13 two doors and the wood bracing up along the
14 top cornice, that is proposed to become a
15 large residential project.

16 CHAIRPERSON MILLER: Okay. So
17 where did the person live who moved?

18 MR. SMITH: In the Nine
19 Condominium, which is the adjacent property.

20 CHAIRPERSON MILLER: In the nine,
21 right, which is above the restaurant and next
22 to the Lounge.

1 MR. SMITH: Yes, ma'am.

2 CHAIRPERSON MILLER: Okay. So
3 part of my question is I'm sympathetic. I am
4 sympathetic if you are being disturbed by
5 noise that late at night. Okay. I guess part
6 of my question is though, if it's so bad where
7 are all the other residents or are you the
8 only one that is really being disturbed?

9 MR. SMITH: Oh, no.

10 CHAIRPERSON MILLER: I can
11 understand how you said, you know, you get
12 tired of waiting for an Inspector to come and
13 all that kind of stuff. And that this was
14 going to be your opportunity to address it in
15 a different way, well, why isn't anybody else
16 here?

17 MR. SMITH: We were instructed not
18 to provide duplicative testimony. We were
19 actually very specifically cautioned against
20 that and so we felt that George could
21 represent the tenants in the Nine. I could
22 represent the tenants along the north side and

1 O Street.

2 CHAIRPERSON MILLER: Okay.

3 MR. SMITH: If that was incorrect
4 of us to do, I apologize.

5 CHAIRPERSON MILLER: No, I'm kind
6 of concerned about that instruction then, so
7 we will have to look at that, because we don't
8 want people coming up and saying the same
9 thing over and over again. And you know, that
10 can be cured by just saying, you know, I agree
11 with what he said.

12 But on the other hand, we want to
13 know that, how do we know what these other
14 people think, unless they have written
15 something or I know that --

16 MR. SMITH: Sure.

17 CHAIRPERSON MILLER: -- there are
18 people who are part of your group that aren't
19 here. That I understand.

20 MR. SMITH: I was equally
21 concerned about that, but the instruction was
22 clear and it said actually twice that we

1 should avoid duplicative testimony and then
2 the Board would not permit duplicative
3 testimony.

4 So when we were preparing the
5 witness list, we very deliberately tried to
6 keep it very thin.

7 CHAIRPERSON MILLER: Okay.

8 MR. SMITH: I sincerely apologize
9 if that was an error on our part.

10 CHAIRPERSON MILLER: That's not
11 the first time I have heard this, so I think
12 we just need to be clear, because there is one
13 thing, we don't want to spend or have
14 witnesses, you know, testify for 15 minutes
15 over and over again to the same thing.

16 MR. SMITH: Sure.

17 CHAIRPERSON MILLER: But on the
18 other hand, we want to know that, yeah, they
19 really care, it's really impacting them.

20 MR. SMITH: Sure.

21 CHAIRPERSON MILLER: So okay.

22 MR. SMITH: Well, I think if you,

1 you know, would like to see the impact, there
2 are certainly -- the residents that we had who
3 signed onto the original protest petition, the
4 ones who took time off to come to the
5 different hearings here, so that they could be
6 counted.

7 CHAIRPERSON MILLER: Okay.

8 MR. SMITH: You know, I could
9 certainly also provide you with notes of the
10 Blagden Alley and Naylor Court Association's
11 meetings, of ANC-2F's meetings.

12 CHAIRPERSON MILLER: No, that's
13 okay. It just was an observation and you
14 addressed it.

15 MR. SMITH: Okay.

16 CHAIRPERSON MILLER: So that's
17 okay. This template that you are using, is
18 that a template that the ANC is using or is
19 this something you have been using?

20 MR. SMITH: Yes.

21 CHAIRPERSON MILLER: I don't know,
22 you as your party or, you know, with these

1 other four or three establishments that we
2 have heard about, you know, The American and--

3 MR. SMITH: Yes.

4 CHAIRPERSON MILLER: -- Lost
5 Society. Is it ANC's?

6 MR. SMITH: The ANC is pursuing
7 the template through their Alcohol Policy
8 Committee, yes. So in ANC-2F, new licensees
9 and renewals come through the Alcohol Policy
10 Committee. The Alcohol Policy Committee then
11 makes a recommendation to the ANC. The ANC is
12 not bound to our recommendation. They can
13 vote a different way if they choose to.

14 And that will help the ANC to make
15 the decision. That is the process by which
16 the ANC makes a decision as to whether or not
17 they will be protesting a license or whether
18 they will not protest a license.

19 CHAIRPERSON MILLER: So the other
20 establishments that you have used it for, are
21 they all new? A&D?

22 MR. SMITH: All new with the

1 exception of the A&D renewal.

2 CHAIRPERSON MILLER: The A&D is a
3 renewal, but those were the hours it had
4 before?

5 MR. SMITH: Yes.

6 CHAIRPERSON MILLER: Okay. So
7 nobody -- you haven't negotiated a new
8 settlement agreement which brought down the
9 hours to earlier hours yet?

10 MR. SMITH: Not yet, no.

11 CHAIRPERSON MILLER: No. And
12 would you say that these four are the same
13 type of model establishment that Vita Lounge
14 is?

15 MR. SMITH: I would say they have
16 the capacity to be very similar types of
17 establishments. The model that Mood/Vita
18 Lounge has used has changed so much over the
19 years. Some of it, I guess, changes in
20 business climate, some of it probably changes
21 in response to Board Orders from your Board,
22 that I really don't have a very solid read

1 other than what Ms. Beyene presented in her
2 testimony as to who the target audience is
3 that she is going after at any given time.

4 But I would certainly say that
5 they do have the capacity to be good
6 competitors against an establishment of her
7 size.

8 CHAIRPERSON MILLER: Okay. So I
9 wanted to zero in on what we were led to
10 believe at the beginning of this hearing and
11 which I still think is probably the issue, the
12 biggest issue here. And that being the change
13 in hours.

14 MR. SMITH: Sure.

15 CHAIRPERSON MILLER: Okay.
16 Because as Mr. Hibey noted when he looked at
17 the proposed settlement agreement and the
18 changes, and I noted the same, I think there
19 are very few changes.

20 One is a shorter period for an
21 opportunity to cure, which I heard was not
22 opposed by the licensee.

1 And the only other new section I
2 see is one dealing with participation in the
3 community. If you will look at your --

4 MR. SMITH: Yes.

5 CHAIRPERSON MILLER: -- list.

6 MR. SMITH: I'm reviewing that
7 now.

8 CHAIRPERSON MILLER: Okay.

9 MR. SMITH: There is that, the
10 hours of operation, the floor utilization and
11 occupancy was unclear. This one makes it more
12 specific. A specific provision against a
13 dance floor and No. 6, settlement agreement
14 language changes for public space and trash
15 and vermin control and patrons to bring that
16 in line with other licensees, also with
17 security.

18 Yes, you know, we --

19 CHAIRPERSON MILLER: Okay.

20 MR. SMITH: -- the community
21 approached with a number of things and this is
22 what is left.

1 CHAIRPERSON MILLER: Okay. So
2 let's just focus on this hours of operation,
3 because that seems to be, you know, before we
4 close out, the biggest issue between the two
5 of you.

6 MR. SMITH: Sure.

7 CHAIRPERSON MILLER: And what is
8 the problem with the hours? Okay. So I have
9 heard from the applicant that the problem with
10 the hours changes that -- you know, she thinks
11 it is going to kill her business.

12 And what I hear from you is that
13 you don't think so, that she is very adaptable
14 and competitive.

15 Okay. But you are not necessarily
16 an expert on that, so I don't want to go down
17 that road with you necessarily.

18 MR. SMITH: That's fine.

19 CHAIRPERSON MILLER: The road I
20 want to go down with you on is, you know, the
21 why? What's the problem? I mean, you have
22 covered this a little bit with other Board

1 Members. Okay. So what is the problem
2 between 1 and 2?

3 I have heard one, it is crowd
4 control and two, it is you just want the noise
5 to end earlier.

6 MR. SMITH: I would say both of
7 those are accurate.

8 CHAIRPERSON MILLER: Okay. So
9 let's just say look at crowd control.

10 MR. SMITH: Sure.

11 CHAIRPERSON MILLER: Other than,
12 and I'm not saying we are not going to do it,
13 but other than earlier hours, were there other
14 solutions I thought that I heard you put on
15 the table, such as more police or something?

16 MR. SMITH: I think more police
17 would be helpful. I think halving the
18 occupancy would be helpful. But I --

19 CHAIRPERSON MILLER: I'm sorry,
20 you are going too -- more police. Let's just
21 deal with that.

22 MR. SMITH: Sure.

1 CHAIRPERSON MILLER: There are two
2 there now apparently.

3 MR. SMITH: Sure.

4 CHAIRPERSON MILLER: According to
5 you, they are not -- that's not adequate. So
6 what aren't they doing that a few more would
7 do?

8 MR. SMITH: I'm honestly not
9 familiar with what they do and don't do, aside
10 from what I can hear from my home and what I
11 have observed when I have wandered over that
12 way at closing time.

13 You know, I would assume that a
14 stronger police presence would discourage
15 people from engaging into fights and yelling
16 and screaming at one another.

17 CHAIRPERSON MILLER: Okay. So you
18 hear that now?

19 MR. SMITH: Yes.

20 CHAIRPERSON MILLER: Okay.

21 MR. SMITH: And I mean, I guess
22 that's just my own personal feeling that I

1 wouldn't yell and scream and get into a fight
2 with someone if there was a police officer
3 standing right here.

4 CHAIRPERSON MILLER: Okay, yes.

5 MR. SMITH: That serves as a
6 natural deterrent to me.

7 CHAIRPERSON MILLER: It may be
8 different, but does it wake you up or are you
9 up and it disturbs you?

10 MR. SMITH: Often it wakes me up.

11 CHAIRPERSON MILLER: Wakes you up.
12 Okay. All right. So okay, you think that
13 more police would control the crowd better and
14 they wouldn't get into fights or be so noisy.
15 Is that right?

16 MR. SMITH: I would speculate that
17 more --

18 CHAIRPERSON MILLER: Okay.

19 MR. SMITH: -- police may help. I
20 would hardly say that that is something that
21 I am confident in as a solution or an outcome.

22 CHAIRPERSON MILLER: Okay.

1 MR. SMITH: But I would speculate
2 that might have some impact.

3 CHAIRPERSON MILLER: You also said
4 you would prefer if they didn't have valet,
5 because that -- is that noisy in front of --
6 in the alley or where is it? What's the
7 problem?

8 MR. SMITH: Speaking purely for
9 myself and not for the protest group, yes, I
10 would prefer that they not have valet
11 operations. If they have two valet operators
12 and 60 cars in valet or 30 cars or however
13 many they have, that means that one of those
14 two people has to get into each one of those
15 cars, so that means that if you are the 15th
16 person in the line, that you are last. And
17 they have to get 14 cars and bring them back
18 before they get to you.

19 So that means that you are
20 standing there at the valet stand waiting for
21 them to go and get your car and bring it back.
22 Whereas if you had parked the car yourself,

1 when you walk out of the nightclub, you have
2 your keys in your hand, hopefully you can
3 remember where you put the car, and you can go
4 directly there. You don't have to wait for
5 anybody.

6 CHAIRPERSON MILLER: Okay. So
7 then we are probably going to hear well, the
8 other protestants don't like that, because
9 then they are coming into their streets and
10 making noise in front of their houses.

11 MR. SMITH: Well, the valet
12 parking attendants park the cars on the
13 residential streets anyway, so it really
14 doesn't matter. I mean, we deal with it one
15 way or the other. So --

16 CHAIRPERSON MILLER: And is there
17 public transportation nearby?

18 MR. SMITH: There is a Metro that
19 is two or three blocks away towards the south
20 and one that is three or four blocks away
21 towards the north and, of course, 9th Street
22 has numerous bus lines.

1 CHAIRPERSON MILLER: Okay. And
2 what would you say about if they let our
3 earlier than the other places, then these
4 crowds of people will be walking the streets
5 to other bars. How does that solve the --
6 that really moves the problem, right?

7 MR. SMITH: Well, it would move
8 the problem away from that portion of 9th
9 Street. This is the only licensee that has
10 hours that are this late, so if the other
11 licensees are all closing at that point in
12 time and all of these patrons are closing at--
13 or all of these patrons are also leaving at
14 that point in time, that would have them
15 heading out of the neighborhood hopefully
16 heading home for the evening, but heading to
17 wherever else their evening is taking them.

18 CHAIRPERSON MILLER: I think that
19 the applicant gave us a list of establishments
20 in the area and the ZIP Code and you all gave
21 us a list of establishments also. So my
22 question is, I don't have that right in front

1 of me, but, the places that are like Penthouse
2 Nine that are in the area, we heard there were
3 a lot in the area.

4 MR. SMITH: There are and there
5 aren't. I believe that exhibit was actually
6 fairly misleading. The ZIP Code that we
7 occupy goes all the way from Michigan Avenue
8 at the north end to the National Gallery of
9 Art on the National Mall at the south end.
10 It's a very tall but narrow ZIP Code that
11 encompasses large swaths of downtown and large
12 swaths of the U Street community.

13 The Shaw and the Blagden Alley/
14 Naylor Court portion of Shaw --

15 CHAIRPERSON MILLER: Okay.

16 MR. SMITH: -- is not represented
17 well by that list.

18 CHAIRPERSON MILLER: So you think
19 that the list that you provided is
20 representative if we were to look at that list
21 to determine the --

22 MR. SMITH: Yes. These

1 establishments are all immediately proximate
2 within a few blocks of this establishment.

3 CHAIRPERSON MILLER: Okay.

4 MR. SMITH: Or on the block with
5 this establishment.

6 CHAIRPERSON MILLER: Thank you.

7 MR. SMITH: The list that was
8 provided by Mr. Hibey has a number of
9 establishments that are 10, 12, 15 blocks
10 away, much like I wouldn't affiliate myself
11 with Dupont Circle and say that I was part of
12 the Dupont Circle neighborhood or the
13 Chinatown neighborhood, I wouldn't say that I
14 was part of the neighborhood for things that
15 are up far on the north end of U Street
16 either.

17 CHAIRPERSON MILLER: Okay. So if
18 we look at your list, which is Protestant's
19 Exhibit 3, I guess?

20 MR. SMITH: Yes, ma'am, I believe
21 so.

22 CHAIRPERSON MILLER: It's not in

1 evidence yet, I don't think. But anyway,
2 there are some CTs that are open until 3:00 on
3 this list. There is a lot more CRs and Cs.
4 So is it your point that there aren't many
5 comparable establishments in the neighborhood?

6 MR. SMITH: Yes. I would actually
7 point to the fact that there is one CT on here
8 that has the hours that Vita Lounge currently
9 has and that would be Bar 7 at 1015 7th
10 Street.

11 CHAIRPERSON MILLER: Okay.

12 MR. SMITH: They are open until
13 2:00 a.m. and 3:00 p.m. -- or 3 -- 2:00 a.m.
14 and 3:00 a.m.

15 CHAIRPERSON MILLER: Right.

16 MR. SMITH: All of the other CT
17 Licenses on here, A&D is 1:00 and 2:00, Lost
18 and Found 1:30 and 2:30. Dacha Beer Garden
19 10:30 and midnight.

20 MR. HIBEY: Objection.

21 CHAIRPERSON MILLER: What's your
22 objection?

1 MR. HIBEY: What's Dacha Beer
2 Garden?

3 CHAIRPERSON MILLER: He is
4 reading --

5 MR. SMITH: It's an establishment
6 on the 1600 -- or at 1600 7th Street. It's a
7 mostly outdoor venue.

8 MR. HIBEY: And it's a CT?

9 MR. SMITH: I believe it is a CT.

10 CHAIRPERSON MILLER: Okay. Now,
11 well, it's listed on your chart as a DT.

12 MR. HIBEY: DT.

13 MR. SMITH: I believe that's a
14 typo, but I'll double check.

15 CHAIRPERSON MILLER: So A&D and
16 Lost and Found and you just -- we talked about
17 those. Those are either new ones or their
18 hours didn't change.

19 MR. SMITH: Yes, that's correct.

20 CHAIRPERSON MILLER: So is there--
21 you probably don't live near Bar 7, so that's
22 probably not an issue to you. Is that

1 correct?

2 MR. SMITH: I don't. I would say
3 it's four blocks away.

4 CHAIRPERSON MILLER: Okay. So am
5 I correct that it's not necessarily the hour,
6 if the conditions didn't exist during that
7 hour? If there were police and it was quiet
8 between 2:00 and 3:00? It's a big if. But
9 then it wouldn't be a problem the 2:00 and
10 3:00. And that it is a problem because it's
11 noisy right now.

12 MR. SMITH: Yes. I think that the
13 challenge for this neighborhood is that we
14 have been made promises over and over and over
15 and over. They have never really panned out.
16 Saying that they would put more police outside
17 or that they would try and change something
18 where they had 10 people working at valet at
19 the end of the night or however they wanted to
20 do it, that doesn't guarantee any type of
21 resolution to the problem.

22 The hour does guarantee that for

1 that last hour of the night, there is peace
2 and quiet, because there is no reason for
3 anyone to be here --

4 CHAIRPERSON MILLER: Yes, okay.

5 MR. SMITH: -- during that time.
6 So the reason why that is, for me, something
7 that I am so confident in is that it is
8 infallible. There is no human error in it.
9 If you are abiding by the hours of operation
10 that you are allowed to operate and it is that
11 reduced hour, then that final hour of the
12 evening, you don't need to have police. You
13 don't need to have other methods.

14 There isn't any other part of the
15 system that can break down and lead to their
16 still being a problem.

17 CHAIRPERSON MILLER: All right.
18 Let me ask you this question. Just because
19 you said you are working on -- you work on
20 Main Street and helping businesses make it and
21 I think you made the comment that Penthouse
22 Nine has had to change so far in order to

1 coexist in the community.

2 MR. SMITH: Sure.

3 CHAIRPERSON MILLER: And I would
4 say I do recall that they have said that they
5 didn't think they could make it without
6 promoters and it sounds like actually you are
7 making it so far, which is good. So I just
8 want to ask you this question. Just how do
9 you think if they -- we have heard that they
10 said they wouldn't be able to make it in their
11 current model, because they would lose their
12 customers to comparable establishments that
13 can stay open until 3:00.

14 So what's your response to that,
15 how they would make it? Not that you are --

16 MR. SMITH: I would say that fear
17 of change is natural and normal as a human
18 response, but that I am 100 percent confident,
19 and this is my professional opinion as someone
20 who works with small businesses for a living,
21 that they would be very successful with that
22 change if they were willing to make other

1 modifications to the way that they operate
2 their business.

3 I think one of the reasons why
4 some of the other establishments on our block
5 and on other adjacent blocks that have that
6 reduced hour or some of them reduced by
7 several hours, why they are successful is
8 because they operate as an establishment that
9 is designed towards an earlier crowd.

10 You know, I know at A&D and a
11 number of the others, they start having a very
12 sizeable crowd starting at happy hour. A
13 number of bars throughout the city have a very
14 sizeable crowd starting at happy hour and that
15 continues into their evening.

16 And they are able to be very
17 profitable. Ms Beyene's testimony was that
18 she usually has 30 or 40 people, you know,
19 during the happy hour time frame.

20 CHAIRPERSON MILLER: Okay.

21 MR. SMITH: That's not targeting
22 an audience that can be incredibly lucrative.

1 There are certainly plenty of bars that make
2 a lot of money on that.

3 I think that if she were to do
4 some minor reorientation of the type of crowd
5 she was looking for and more specifically, the
6 time of day she wanted them to be there, I am
7 100 percent confident she could be incredibly
8 successful.

9 And your example regarding the
10 promoters is a perfect example there. I
11 recall her saying that without promoters there
12 was no way that her business could survive and
13 that was several years ago.

14 CHAIRPERSON MILLER: Okay. Thank
15 you. Mr. Jones, you have some more?

16 MEMBER JONES: Yes.

17 CHAIRPERSON MILLER: Okay.

18 MEMBER JONES: I just had a
19 follow-up on the statements here. So in terms
20 of, I guess, the business model suggestions or
21 feedback that you had, the -- you do not have
22 to live with the consequences associated with

1 the changes in the sense of from a business
2 standpoint.

3 MR. SMITH: From a business
4 standpoint, no. From a personal standpoint,
5 yes.

6 MEMBER JONES: Okay. Exactly. So
7 you are obviously going to be naturally skewed
8 and bias towards those things that are going
9 to be most beneficial to you when you are
10 saying that you believe those changes made to
11 the business will have no negative impact on
12 the business.

13 MR. SMITH: Actually, no. I think
14 it would have a positive impact on the
15 business as well. And I say that as my
16 professional opinion. I think that for --
17 maybe it cannot be good for her bottom line to
18 constantly be coming back here to the ABRA
19 Board and having hearings and paying fines.

20 It cannot be good for her bottom
21 line to have to deal with late night noise
22 complaints. I think making a shift towards

1 and earlier oriented establishment would be
2 substantially of greater benefit to the
3 business than it would to me.

4 MEMBER JONES: You are basing that
5 off of what exactly? I'm just trying to
6 understand.

7 MR. SMITH: I'm basing that off of
8 my years of experience in Main Street and
9 community development corporations working
10 with hundreds of small businesses, the fact
11 that I have also worked as a consultant with
12 a number of small businesses and my basic
13 education in economics from my bachelors and
14 my masters degree.

15 MEMBER JONES: Okay. So she could
16 operate as what you just described with the
17 extended hours and be just as profitable with
18 the extended hours if she didn't operate in
19 those extended hours? So she can make the
20 change to that business model that you just
21 described without having to have her hours
22 reduced?

1 MR. SMITH: She could.

2 MEMBER JONES: She would be more
3 profitable, as you indicated, she could become
4 a better business, as you indicated, without
5 having to change her operating hours. She
6 could just operate at hours less than what she
7 is legally allowed to do and be morphed into
8 this great thing that you believe is in play
9 for her?

10 MR. SMITH: Yes. And I suggested
11 that to her several months ago.

12 MEMBER JONES: Okay.

13 MR. SMITH: That she try that
14 before we got to this point. I suggested that
15 she experiment with closing earlier to see if
16 there was actually the outcome that she
17 predicted there would be.

18 MEMBER JONES: The outcome she
19 predicted she would be is what?

20 MR. SMITH: That her business
21 would fail without this additional hour. I
22 suggested that since she certainly has the

1 capacity, but there is no requirement that she
2 be open until 3:00 in the morning, that she
3 experiment with closing at earlier hours
4 during the multi-week protest period between
5 the mediation hearing and getting to this
6 point, so that she could try it first hand
7 where there wasn't any type of restriction,
8 where if it turned out to be unsuccessful, she
9 could address that here.

10 And I believe she had not chosen
11 to proceed with that.

12 MEMBER JONES: Okay. So I think
13 it's interesting, but, obviously, you don't
14 have any negative ramifications. You suffer
15 no negative effect if her business fails.

16 MR. SMITH: I suffer the negative
17 effect that we lose a small business from our
18 community, which is something --

19 MEMBER JONES: One that you --

20 MR. SMITH: -- that I take
21 personally.

22 MEMBER JONES: -- don't want right

1 now, as it currently is operating, correct?

2 MR. SMITH: One that I don't think
3 is operating properly, but one that has an
4 owner that I really think has the potential to
5 be a valuable contributor to the community.

6 MEMBER JONES: Okay. And how are
7 you here today? You are representing the
8 group of five?

9 MR. SMITH: A group of five or
10 more, yes, sir.

11 MEMBER JONES: Five or more.
12 Okay. Cool. Thank you. Thank you, Madam
13 Chair.

14 CHAIRPERSON MILLER: Okay. Any
15 other Board questions? Are there questions
16 based on the Board questions?

17 MR. HIBEY: I have one or two.

18 CHAIRPERSON MILLER: Okay.

19 RECROSS-EXAMINATION

20 MR. HIBEY: None of your
21 complaints to ABRA in the last two years have
22 been about -- well, all of your complaints in

1 the last two years have been about sound from
2 inside, correct?

3 MR. SMITH: I can speculate that
4 that sounds accurate.

5 MR. HIBEY: I mean, you have never
6 made complaints about -- to ABRA about the
7 patrons that are outside exiting in the last
8 two years.

9 MR. SMITH: No, it was my
10 understanding from Investigator Shakoor that
11 that was MPD's jurisdiction and that I should
12 direct all of those complaints towards the
13 police department.

14 MR. HIBEY: And you have never
15 done that?

16 MR. SMITH: I have called the
17 police department before, yes.

18 MR. HIBEY: About the patrons
19 outside?

20 MR. SMITH: Yes.

21 MR. HIBEY: What about this hour,
22 this hour reduction that is in your template

1 is very important to you, right?

2 MR. SMITH: I think it resolves an
3 issue that is important to the entire
4 neighborhood, yes.

5 MR. HIBEY: Okay. But it's an
6 issue that is not specific to this business,
7 correct?

8 MR. SMITH: It is specific in many
9 ways to this business. This business is --

10 MR. HIBEY: The hour reduction --

11 MR. SMITH: Yes.

12 MR. HIBEY: -- is something you
13 want neighborhood-wide, right?

14 MR. SMITH: I think it would be a
15 generally good idea neighborhood-wide. I
16 think particularly it is something that is an
17 effective tool against operators that have
18 shown problems in the past, which this
19 operator certainly does.

20 MR. HIBEY: You want it
21 neighborhood-wide, right?

22 MR. SMITH: I don't feel strongly

1 about it one way or the other, but there are
2 people in the community who do.

3 MR. HIBEY: So you didn't say that
4 the real concern in this issue is the hours
5 precedent? You never said that?

6 MR. SMITH: In what context?

7 MR. HIBEY: In any context. You
8 never said that?

9 MR. SMITH: I can't say what words
10 I may or may not have spoken together in any
11 context without anything to frame that and I
12 can't answer that question.

13 MR. HIBEY: Okay. So you can't
14 say for sure one way or the other?

15 MR. SMITH: I don't recall
16 everything that I have ever said to anyone in
17 my entire life, no, sir, I don't.

18 MR. HIBEY: So you can't say that
19 you didn't say that?

20 MR. SMITH: We are going in a
21 circle here. If you can't give me context, I
22 can't say whether or not it would even be

1 likely that I would have said or not said
2 something.

3 Just as something that is a
4 general statement that may at some point come
5 out of my mouth over the last 30 some odd
6 years, I can't say one way or the other.

7 MR. HIBEY: Okay. So your real
8 concern here isn't the hours precedent?

9 MR. SMITH: I'm not sure where you
10 are going with this.

11 MR. HIBEY: I asked you a
12 question. Is your real concern here the
13 precedent of a reduction of one hour?

14 MR. SMITH: The precedent in what
15 context?

16 MR. HIBEY: And that's what you
17 want. The neighborhood, to have a one hour
18 reduction here to establish the precedent in
19 the neighborhood that businesses will be open
20 until 1:00 and 2:00 a.m., that's what your
21 real concern is, isn't it?

22 MR. SMITH: The precedent is

1 already established. There is numerous other
2 establishments with that restriction.

3 MR. HIBEY: Okay. So your concern
4 is that precedent, that you have already
5 established?

6 MR. SMITH: No. My concern is
7 resolving the problems with this particular
8 licensee.

9 MR. HIBEY: And that's --

10 MR. SMITH: I am here only --

11 MR. HIBEY: -- why you propose a
12 settlement agreement --

13 MR. SMITH: -- addressing --

14 MR. HIBEY: -- that addresses no
15 issues with this particular licensee, right?

16 MR. SMITH: It does address issues
17 with this licensee.

18 MR. HIBEY: Nothing changes in the
19 noise provisions.

20 MR. SMITH: If nothing changes
21 with the proposed settlement agreement, then
22 why are we here? Why didn't your client sign

1 the settlement agreement if it is --

2 MR. HIBEY: Because it's the
3 hours.

4 MR. SMITH: -- something that is
5 not changing?

6 MR. HIBEY: It's the hour changes
7 and that's the precedent that you want to
8 establish in your neighborhood.

9 MEMBER SILVERSTEIN: Madam Chair?

10 CHAIRPERSON MILLER: Yes?

11 MEMBER SILVERSTEIN: Is he not
12 required to ask questions rather than debate?

13 CHAIRPERSON MILLER: Yes, that's
14 true.

15 MR. HIBEY: My questions have yes
16 or no answers.

17 MEMBER JONES: With all due
18 respect, I think it's also the obligation of
19 the witness to answer the questions being
20 asked.

21 MR. SMITH: I -- if I could
22 understand the questions, I would.

1 CHAIRPERSON MILLER: Okay.

2 MEMBER JONES: I don't think they
3 are that hard.

4 CHAIRPERSON MILLER: All right.
5 You have heard the complaints. Continue.

6 MR. HIBEY: Yes. I think we are
7 done.

8 CHAIRPERSON MILLER: You are
9 finished?

10 MR. HIBEY: Yes.

11 CHAIRPERSON MILLER: All right.

12 MR. DANILOVICS: I have no
13 questions and I move to enter Plaintiff 1
14 through 5.

15 CHAIRPERSON MILLER: The Plaintiff
16 Exhibits 1 through 5 in the green folder, is
17 that correct?

18 MR. DANILOVICS: Correct.

19 CHAIRPERSON MILLER: Okay. Are
20 there any objections?

21 MR. HIBEY: No objections.

22 CHAIRPERSON MILLER: I would just

1 like to ask about the photograph where it is
2 from. Is it from some --

3 MR. DANILOVICS: It's from Google.

4 CHAIRPERSON MILLER: Google.

5 MR. DANILOVICS: The protestant --
6 which exhibit?

7 CHAIRPERSON MILLER: This is
8 Exhibit 4.

9 MR. DANILOVICS: The aerial
10 photograph? Yes, that's from Google.

11 CHAIRPERSON MILLER: It's from
12 Google. Okay. And when was it gotten?

13 MR. DANILOVICS: This hearing was
14 originally scheduled for two months ago --

15 CHAIRPERSON MILLER: Okay.

16 MR. DANILOVICS: -- so that's when
17 that was --

18 CHAIRPERSON MILLER: Okay. All
19 right. No objections. All right. So
20 Protestants Exhibits 1 through 5 are admitted.

21 (Whereupon, the above-referred to
22 documents were received into

1 evidence as Protestant Exhibit No.
2 1 through 5.)

3 CHAIRPERSON MILLER: Okay. So I
4 believe that you can be excused.

5 MR. SMITH: All right.

6 CHAIRPERSON MILLER: There are no
7 further questions for you. Thank you very
8 much.

9 MR. SMITH: And if it's all right
10 with you, would you mind if we take a short
11 break, so that I might be able to use the
12 restroom before we proceed?

13 CHAIRPERSON MILLER: Sure. So is
14 five minutes enough?

15 MR. SMITH: Five minutes is more
16 than enough.

17 CHAIRPERSON MILLER: Okay. Then
18 we will recess for five minutes.

19 (Whereupon, the above-entitled
20 matter went off the record at 5:28 p.m. and
21 resumed at 5:36 p.m.)

22 CHAIRPERSON MILLER: Okay. We are

1 back on the record. So now, we are ready for
2 closing and the --

3 MR. DANILOVICS: I have to testify
4 still.

5 CHAIRPERSON MILLER: Oh, you
6 didn't testify. Oh.

7 MR. DANILOVICS: We will try and
8 make it --

9 CHAIRPERSON MILLER: We're not
10 ready for closing. We have one more witness.
11 Okay. Go ahead. I'll swear you in.
12 Whereupon,

13 GEORGE DANILOVICS
14 was called as a witness by Counsel for the
15 Protestant, and having been first duly sworn,
16 assumed the witness stand and was examined and
17 testified as follows:

18 MR. DANILOVICS: I do.

19 CHAIRPERSON MILLER: Okay. Go
20 ahead. Sorry about that.

21 MR. DANILOVICS: That's okay.

22 DIRECT EXAMINATION

1 MR. SMITH: Would you identify
2 yourself?

3 MR. DANILOVICS: I'm George
4 Danilovics, D-A-N-I-L-O-V-I-C-S.

5 MR. SMITH: Are you ready?

6 CHAIRPERSON MILLER: Yes, yes,
7 your witness.

8 MR. SMITH: Mr. Danilovics, where
9 exactly do you live? Please use Photograph
10 No. 26 from the applicant's exhibit if it's
11 beneficial.

12 MR. DANILOVICS: The address on
13 that is 1316 Naylor Court, N.W. We are the
14 building directly south of Mood Lounge.

15 MR. SMITH: So that is the one
16 with the red brick in this photograph?

17 MR. DANILOVICS: That is --

18 MR. SMITH: This building over
19 here?

20 MR. DANILOVICS: -- the red brick
21 building, correct.

22 MR. SMITH: And how long have you

1 lived at this location?

2 MR. DANILOVICS: I moved into the
3 Nine, that's the name of the condominium, in
4 January of 2010.

5 MR. SMITH: And can you describe
6 that building there? Is it commercial space,
7 then residential spaces? Which ones front out
8 onto 9th Street and which ones onto Naylor
9 Court?

10 MR. DANILOVICS: The first floor
11 of the building is a commercial space. It
12 runs from 9th Street on the front to Naylor
13 Court on the back, occupied by a restaurant,
14 Thally.

15 At the back of the building, the
16 second floor, there is a one bedroom
17 condominium unit. The third and fourth floor
18 in the back is my residence, also a condo
19 unit. And the front of the building on the
20 second floor, there is a condo unit. And on
21 the third floor, there is a fourth condo unit
22 and a small commercial architect studio. So

1 four residential, two commercial.

2 MR. SMITH: Why did you choose to
3 move to this location?

4 MR. DANILOVICS: I had been
5 renting in the D.C. area for a few years,
6 saved up some money and was looking to stay in
7 the District. I work over by Union Station,
8 so I wanted proximity to Metro, wanted
9 proximity to a grocery store. At the time, it
10 was the old Giant. And everything I needed
11 was walkable nearby.

12 We had all the businesses. We had
13 mixed-use. We had residential. The 9th
14 Street Corridor looked like it was getting
15 ready to start being developed and it looked
16 like a great opportunity to move in. So saved
17 for two years, came up with the money for the
18 down payment and everybody in the building, it
19 was a brand new building, a rehab building,
20 closed in January of 2010, except the first
21 floor commercial space, which came about a
22 year or two later.

1 MR. SMITH: Mr. Danilovics, when
2 you moved, was the Mood Lounge, which was the
3 previous name for Vita Lounge, were they in
4 operation?

5 MR. DANILOVICS: No. At that time
6 in January 2010 when everybody closed to move
7 into the building, the space which is now
8 occupied by Vita Lounge was occupied by FN Bar
9 or BE Bar, FN Bar.

10 MR. SMITH: And to your knowledge,
11 is that the same license that is now used
12 under Vita Lounge at that same location?

13 MR. DANILOVICS: That's the name
14 that's written at the top of the current
15 voluntary agreement.

16 MR. SMITH: Okay. Did you have
17 problems of any kind or to your knowledge did
18 anyone else in The Nine have problems of any
19 kind with noise coming from the establishment
20 while it was in operation or from patrons that
21 had exited the establishment after it closed
22 for the evening at that time?

1 MR. DANILOVICS: I submitted no
2 ABRA violation notice in all of 2010. And to
3 my knowledge, no other tenants within The Nine
4 submitted notices.

5 MR. SMITH: So you would say that
6 the noise problems even with the 34 speakers
7 that were supposedly in operation, at that
8 point in time, was not an issue with the
9 previous tenant, presumably because the volume
10 of the music that they played on those
11 speakers was just lower? Can you speculate as
12 to why?

13 MR. DANILOVICS: I can't speculate
14 as to why, but I can confirm that our first
15 notice to ABRA about noise violations from
16 1318 were early 2012 or sorry, 2011 after it
17 transferred ownership.

18 MR. SMITH: And is your experience
19 with Vita Lounge consistent with the
20 experience that you had when it was going
21 under the name Mood Lounge for its first year
22 and a half, two years in operation?

1 MR. DANILOVICS: Since the name
2 change and after subsequent Board actions, the
3 establishment has improved.

4 MR. SMITH: Okay. Have you or
5 other residents of The Nine filed ABRA
6 violations against Mood Lounge and have you
7 also filed ABRA violations subsequently
8 against Vita Lounge?

9 MR. DANILOVICS: While it was
10 operating under Mood Lounge, there were
11 multiple violations submitted and many made it
12 before the Board and resulted in fines being
13 assessed.

14 In recent history, the last
15 violation that I submitted was in December of
16 2013.

17 MR. SMITH: Okay. And --

18 MR. DANILOVICS: For noise, sorry.

19 MR. SMITH: Yes. And is there any
20 reason in particular why you haven't filed a
21 lot of additional violations? Since then has
22 the noise problem abated? Have you not been

1 present?

2 MR. DANILOVICS: Yes, to both.

3 I'm frequently gone on the weekends, so there
4 are few weekends where I am actually around.
5 You mentioned that there was an incident where
6 valets were parked in Naylor Court. My
7 entrance is on Naylor Court and I was not home
8 that weekend, so I did not observe that.

9 But there have been instances
10 where the noise has been audible within my
11 residence, but I've been putting more effort
12 into this process than into trying to penalize
13 actions that are currently underway.

14 MR. SMITH: Do you serve in any
15 official role in your building at The Nine
16 perhaps in the management of the building?

17 MR. DANILOVICS: Yes. I'm the
18 treasurer for The Nine, so I oversee all the
19 finances.

20 MR. SMITH: Okay. Do you have any
21 other responsibilities as far as that role is
22 concerned?

1 MR. DANILOVICS: I am responsible
2 for all move-ins/move-outs, so as we get new
3 owners, as owners sell, making sure that they
4 are set up with their association dues. One
5 of our units, the owner is renting it out.
6 It's the unit on the back on the second floor,
7 so the people directly below me. So handling
8 all the logistics of when a renter moves in
9 and out and when they can get access to the
10 building, that's on to me to handle as well.

11 MR. SMITH: And what is the
12 current tenant composition of The Nine?

13 MR. DANILOVICS: Four residential
14 and two commercial.

15 MR. SMITH: And the tenants that
16 are in there, are these mostly young people,
17 people with families? It's not -- is it set
18 up as housing that is conducive to families or
19 is it more young single people in college?

20 MR. DANILOVICS: Out of the four
21 residential, two are single and two are
22 couples, but no children.

1 MR. SMITH: Okay. Have there been
2 any changes in the tenants in The Nine?

3 MR. DANILOVICS: Yes. From the
4 inception in January of 2010, there were two
5 renters below me. Those renters moved out in
6 fall of 2012. During the move-out process,
7 they were also party to many of the noise
8 violations that made it before this Board.

9 They cited as one of their reasons
10 was the continued noise not being conducive to
11 where they were living. Again, their unit was
12 on the second floor, so it is directly sharing
13 a wall with Vita Lounge in the back.

14 And then recently back in the
15 spring, John Froehlich and Bettina, I don't
16 remember her maiden name, but she got married,
17 so I'm assuming she is taking his last name,
18 they recently sold their unit. They are on
19 the second floor as well, but at the front of
20 the building and they were also frequently
21 disturbed by the noise and cited that as why
22 they were leaving the building.

1 MR. SMITH: Let me ask you, why do
2 you think that establishments in the
3 neighborhood closing at 1:00 a.m. and 2:00
4 a.m. would make a difference in the noise
5 issues and the other ongoing problems with
6 this particular establishment?

7 MR. DANILOVICS: Many in the
8 neighborhood about a year, year and a half ago
9 started aggressively wanting to pursue an
10 overlay to restrict any new licensees, to not
11 allow any new ABRA licensees and to strictly
12 control what can come into the neighborhood
13 and that's not what I want.

14 I would like more businesses to
15 come in. There is lots of property to still
16 be developed and the property is being
17 developed. There is residential coming up.
18 There is commercial. There is restaurants and
19 there is bars. And that's what I liked about
20 the area. That's why I moved here.

21 But in order for the mixed
22 development to work, everybody has to

1 cooperate together. And the area turning
2 into, you used the word, a nightlife district
3 where the focus is between, you know, midnight
4 and 3:00 in the morning is not conducive to
5 the neighborhood that I'm living in the
6 neighborhood I would like to live in.

7 I liked the mixed-use. I liked
8 all the restaurants. I liked everything
9 nearby. I currently do like it. Sorry, It
10 should be past tense. And I plan on staying
11 here for a long time.

12 So I want the bars and
13 establishments that come into the neighborhood
14 to be allowed to without restrictions on any
15 type of overlay, but to operate within certain
16 parameters that don't allow bad actors to be
17 nuisances to the neighborhood.

18 And as is evident by A&D, which
19 came in prior to the template that your group
20 worked on, but has the same hours, has been
21 successful. They have had no noise
22 complaints. They have had no noise

1 violations.

2 As you mentioned when they did
3 their renewal, nobody protested it. No
4 neighborhood protest on the renewal and the
5 applicant didn't protest to get any hours
6 changed.

7 Likewise with Thally, who is in
8 our building on the first floor, they agreed
9 to those same hours. And likewise, we have
10 had two more. So we have, to go to an earlier
11 question, set a precedent to get hours that
12 businesses can be successful while also
13 maintaining the peace, order and quiet in the
14 neighborhood without having to go to an
15 overlay.

16 MR. SMITH: Thank you very much.
17 that's all I have, at this time.

18 CHAIRPERSON MILLER: Okay. Cross?

19 MR. HIBEY: I don't have anything.

20 CHAIRPERSON MILLER: Okay. Board
21 questions? I just have a clarification. So
22 when you say overlay, I think you mean

1 moratorium, right?

2 MR. DANILOVICS: Correct.

3 CHAIRPERSON MILLER: Okay.

4 MR. DANILOVICS: Correct.

5 CHAIRPERSON MILLER: Because I
6 know under zoning there are overlays and that
7 you wouldn't -- you know, that talk about
8 eating and drinking establishments, but that
9 you were referring to the moratorium on
10 alcohol.

11 MR. DANILOVICS: Yes, I would like
12 to stay far away from zoning.

13 CHAIRPERSON MILLER: Okay. That's
14 all. All right. I don't think you have any
15 questions on my one question, right?

16 MR. SMITH: (No audible answer.)

17 CHAIRPERSON MILLER: No. Okay.
18 Thank you.

19 MEMBER SILVERSTEIN: I would like
20 to bring him back for a second.

21 CHAIRPERSON MILLER: Okay. I just
22 want -- first of all, I think, Mr. Froehlich,

1 if I'm not correct, was -- testified before us
2 at a number of --

3 MR. DANILOVICS: Yes.

4 MEMBER SILVERSTEIN: -- he was
5 here and was a lead in this. If assuming that
6 this case were to go against you and we were
7 going to give them their renewal, it's a
8 question we often ask, it's arguendo, what
9 would the conditions be beyond this one hour?
10 Are there any other things that you would hope
11 for that might make things better for you?

12 MR. DANILOVICS: I would refer the
13 Board to the settlement agreement that was
14 recently signed with Lost and Found. Lost and
15 Found actually has longer hours than we were
16 offering to -- or we currently are offering --
17 asking for Vita Lounge. It's 1:30 and 2:30.

18 But with respect to the half hour
19 closing to allow those patrons to get out and
20 exit in an orderly fashion, but it's also
21 worth nothing that Lost and Found within their
22 settlement agreement has a much stricter sound

1 provision.

2 The current standard that we have
3 with Vita Lounge is no noise audible within
4 our residences. And prior testimony, the
5 standard was if you could hear the music over
6 your television with your windows shut.

7 The settlement agreement with Lost
8 and Found is no noise period audible outside
9 of the space. So they are required before
10 they operate to ensure that the soundproofing
11 and structure and systems do not release sound
12 out into the neighborhood.

13 So if the hours are a non-starter
14 with the Board and you are looking for sort of
15 that last line, it's ensuring that they are
16 held to a standard and that delays in
17 completing the work that is necessary don't
18 continue.

19 MEMBER SILVERSTEIN: I would urge
20 you not to read anything into my questions.

21 MR. DANILOVICS: Okay.

22 MEMBER SILVERSTEIN: It's simply

1 discerning anything else. Are you aware that
2 the Noise Ordinance, the Law, which of course
3 supersedes your voluntary agreement, also
4 protects you that noise from inside an
5 establishment cannot be -- should not be heard
6 in your residence in a residential
7 neighborhood.

8 MR. DANILOVICS: We have heard
9 conflicting information from, unfortunately,
10 different groups that have different
11 jurisdiction.

12 MEMBER SILVERSTEIN: There are
13 different laws.

14 MR. DANILOVICS: Correct. And
15 adding to the complexity is the fact that it
16 is adjoining a Residential Zone and some
17 folks, some Investigators who have been out
18 interpreted that because it abuts the
19 Residential Zone, that they have to adhere to
20 the residential standard.

21 Others have said that is not the
22 case. So we -- I personally have heard

1 conflicting information and am striving to get
2 the best outcome that we can.

3 MEMBER SILVERSTEIN: Thank you.
4 No further questions.

5 CHAIRPERSON MILLER: Okay.
6 Actually, I was going to ask you to address
7 this in closing, but I'm glad Mr. Silverstein
8 brought it up, because I want to be clear what
9 relief you are asking for.

10 So it sounds like the one hour
11 late and I'm not sure whether it is other
12 changes that you have identified to the
13 settlement agreement, which would be reflected
14 in your Exhibits 1 and 2, I think. Is that
15 correct?

16 MR. DANILOVICS: You are correct.
17 We will be asking the enforcement to reflect
18 Exhibit 1.

19 CHAIRPERSON MILLER: 1, okay. And
20 so I just was confused for a moment when you
21 started talking about Lost Society. So you
22 are not saying that you want the same

1 conditions as Lost Society? You are saying
2 you would ideally want the conditions that you
3 have presented --

4 MR. DANILOVICS: Correct.

5 CHAIRPERSON MILLER: -- in Exhibit
6 1. Is that correct?

7 MR. DANILOVICS: Correct.

8 MEMBER SILVERSTEIN: Lost and
9 Found.

10 CHAIRPERSON MILLER: Lost and
11 Found.

12 MR. DANILOVICS: I think it's
13 actually, yes.

14 CHAIRPERSON MILLER: Lost and
15 Found, sorry.

16 MR. DANILOVICS: Lost Society is
17 up on U Street.

18 CHAIRPERSON MILLER: Right, okay.
19 Okay. Sorry about that. Am I correct though
20 about --

21 MR. DANILOVICS: You are correct.

22 CHAIRPERSON MILLER: -- the relief

1 you are seeking?

2 MR. DANILOVICS: You are correct.

3 CHAIRPERSON MILLER: Okay. All
4 right. Thank you. Mr. Jones?

5 MEMBER JONES: I want to back up.

6 CHAIRPERSON MILLER: Okay.

7 MEMBER JONES: You mentioned the
8 condo sales recently that two people sold
9 specifically or cited as part of the reason
10 why they sold was because they couldn't deal
11 with the noise.

12 MR. DANILOVICS: Correct.

13 MEMBER JONES: What year was that?

14 MR. DANILOVICS: They sold earlier
15 this year about three or four months ago.

16 MEMBER JONES: Okay. You
17 indicated two couples. The first couple is
18 what year?

19 MR. DANILOVICS: No. One couple
20 that was renting moved out back in 2012. And
21 the couple that owned Unit 1 at the front of
22 the building sold earlier this year.

1 MEMBER JONES: Okay.

2 MR. DANILOVICS: So that's the
3 only change in --

4 MEMBER JONES: That's not what I
5 heard. So it's probably just me. My bad,
6 sorry. I'm confused based on what I heard
7 earlier, so let me try and make sure I'm clear
8 and I'm sure it's just me.

9 So there was a -- you indicated
10 that -- I thought you indicated that there was
11 a couple or people that cited as a reason why
12 they sold back in 2010 time frame --

13 MR. DANILOVICS: (No audible
14 answer.)

15 MEMBER JONES: No? Okay.

16 MR. DANILOVICS: It was -- we have
17 only had two unit turnovers since the property
18 became in operation in January of 2010.

19 MEMBER JONES: Okay.

20 MR. DANILOVICS: In 2012, the
21 couple who was renting the Unit No. 5, which
22 is on the second floor in the back, they moved

1 out and they cited the noise issues. They
2 were also party to many of the noise
3 violations during Mood's earlier operating
4 years.

5 MEMBER JONES: Okay. This is in
6 2012?

7 MR. DANILOVICS: Correct.

8 MEMBER JONES: All right. And
9 this is when the establishment was known as
10 Mood or Vita Lounge?

11 MR. DANILOVICS: It was known as
12 Mood back then.

13 MEMBER JONES: At that point.
14 Okay. So the establishment was known as Mood
15 and operating as Mood, then you had that one
16 couple that sold or moved out?

17 MR. DANILOVICS: They moved out.

18 MEMBER JONES: Moved out.

19 MR. DANILOVICS: They were
20 renting --

21 MEMBER JONES: So they didn't own.

22 MR. DANILOVICS: -- from someone

1 else.

2 MEMBER JONES: They were renting.

3 All right.

4 MR. DANILOVICS: Correct. And
5 then to finish the question, earlier this
6 year, a couple who rented another unit at the
7 front of the building, they moved out and that
8 was John Froehlich and Bettina. They were
9 also party to many of the noise violations.

10 MEMBER JONES: Got it. So they
11 were renters?

12 MR. DANILOVICS: They were owners.

13 MEMBER JONES: They were owners.

14 MR. DANILOVICS: They owned their
15 unit.

16 MEMBER JONES: Okay.

17 MR. DANILOVICS: Correct.

18 MEMBER JONES: They owned their
19 unit. And how many years did they own the
20 unit?

21 MR. DANILOVICS: Since January of
22 2010.

1 MEMBER JONES: Since January of
2 2010 and they sold it when again? I'm sorry,
3 roughly.

4 MR. DANILOVICS: About three, no
5 more than six months ago.

6 MEMBER JONES: So 2013?

7 MR. DANILOVICS: Yes. Yes, sir.

8 MEMBER JONES: So we are in June
9 now.

10 MR. DANILOVICS: Yes, I know. It
11 was this year.

12 MEMBER JONES: It was this year,
13 2014?

14 MR. DANILOVICS: Yes, sir. It was
15 earlier this year in 2014.

16 MEMBER JONES: It was earlier this
17 year in 2014. Got it. Okay.

18 MR. DANILOVICS: My apologies on
19 the year. I --

20 MEMBER JONES: No, no problem.

21 MR. DANILOVICS: -- am dealing
22 with fiscal years at work, so I'm already

1 dealing with '15 and it's --

2 MEMBER JONES: Yes, we're talking
3 about doing the same thing at work myself, so
4 no problem.

5 The 20 -- well, the sale that --
6 well, the move-out that occurred in 2012 --

7 MR. DANILOVICS: Yes.

8 MEMBER JONES: -- were renters?

9 MR. DANILOVICS: Correct.

10 MEMBER JONES: Okay. And you said
11 they specifically cited noise being an issue?

12 MR. DANILOVICS: They had -- yes,
13 they cited that. They experienced the brunt
14 of the noise, at the time, particularly the
15 vibrations that were coming through the second
16 floor, which was right where their bedroom
17 was.

18 MEMBER JONES: Got it.

19 MR. DANILOVICS: Their bedroom
20 abuts the wall.

21 MEMBER JONES: They share a wall?

22 MR. DANILOVICS: Yes, sir.

1 MEMBER JONES: So there is a
2 shared wall between your building --

3 MR. DANILOVICS: Yes, sir.

4 MEMBER JONES: -- and the licensed
5 establishment?

6 MR. DANILOVICS: Yes, sir.

7 MEMBER JONES: Okay.

8 MR. DANILOVICS: First and second
9 floors.

10 MEMBER JONES: Got it. And that
11 was renters that moved out in 2012. So there
12 was only one sale?

13 MR. DANILOVICS: Correct.

14 MEMBER JONES: And that was
15 earlier this year?

16 MR. DANILOVICS: Correct.

17 MEMBER JONES: And they had owned
18 the building, the unit from 2010 to 2014. Are
19 you saying they sold it at a loss?

20 MR. DANILOVICS: I didn't comment
21 at all on their sale price.

22 MEMBER JONES: Got it. So I heard

1 testimony from your counterpart that, I
2 believe he said that, they sold it at a
3 considerable loss because they couldn't stand
4 the noise any more. Maybe I misheard that, so
5 I'm just going to ask you. Do you know what
6 they sold it at?

7 MR. DANILOVICS: I don't follow
8 their sell price. It's not important for how
9 we calculate dues for the building. Dues are
10 based on square footage, so what they bought
11 and sold for, I wouldn't know.

12 MEMBER JONES: Okay. Do you have
13 any idea what the property value is for the
14 establishment which you own?

15 MR. DANILOVICS: I have --

16 MEMBER JONES: Do you own a condo?

17 MR. DANILOVICS: Yes, I do.

18 MEMBER JONES: You do.

19 MR. DANILOVICS: Yes.

20 MEMBER JONES: Do you have any
21 clue as to --

22 MR. DANILOVICS: I know what my --

1 the recently appraised value for my unit?

2 MEMBER JONES: Huh?

3 MR. DANILOVICS: The recently
4 appraised value for my unit?

5 MEMBER JONES: Yes. I don't
6 necessarily need to know what it is. I just
7 want to know if you have any idea?

8 MR. DANILOVICS: Yes, I know what
9 it is.

10 MEMBER JONES: Okay.

11 MR. DANILOVICS: I refinanced
12 earlier.

13 MEMBER JONES: So you are telling
14 me that a unit recently sold in a building
15 where you have some authority, i.e., some
16 leadership capacity and you have no clue what
17 that unit sold for?

18 MR. DANILOVICS: It's not under my
19 jurisdiction.

20 MEMBER JONES: Not a matter of
21 being under your jurisdiction.

22 MR. DANILOVICS: Yes.

1 MEMBER JONES: It's general
2 knowledge. So if a house sells on my block,
3 I kind of know what it sold for, because it's
4 an indication of what my house may be worth or
5 may not be worth.

6 MR. DANILOVICS: Their unit is --

7 MEMBER JONES: The way the market
8 is turning, so I find it hard to believe --

9 MR. DANILOVICS: Their unit is --

10 MEMBER JONES: -- that you have no
11 clue what the unit sold for.

12 MR. DANILOVICS: Their unit is a
13 one bedroom unit, which is about half the size
14 of mine, so it would not be an applicable. I
15 have the only two bedroom unit in the
16 building. It's the largest square footage.
17 The other one bedroom is also larger, so the
18 renter below me and the one that recently sold
19 are the two smallest square footages by at
20 least 200 square feet.

21 MEMBER JONES: Okay.

22 MR. DANILOVICS: So --

1 MEMBER JONES: So I gotcha. So
2 you can't testify to the fact that their unit
3 sold for a depreciated value because of its
4 proximity to the licensed establishment. You
5 cannot testify to that, correct?

6 MR. DANILOVICS: Correct.

7 MEMBER JONES: And you cannot
8 testify to the fact that it sold at any price,
9 whether it was below or above market value or
10 below or above what it was purchased at? You
11 can't testify to that at all, correct?

12 MR. DANILOVICS: Correct.

13 MEMBER JONES: Okay. Thank you.
14 Thank you, Madam Chair.

15 CHAIRPERSON MILLER: Okay.
16 Anybody else?

17 MR. HIBEY: I just wanted to
18 follow-up --

19 CHAIRPERSON MILLER: Wait, let me
20 finish, then you can have questions on Board
21 questions.

22 MR. HIBEY: Okay.

1 CHAIRPERSON MILLER: I just have a
2 few now that we are asking you so many
3 substantive questions again. Okay.

4 So are you aware that there have
5 been problems with vibrations since 2012?

6 MR. DANILOVICS: I would have to
7 look to see specifically when the Board did
8 their last rounds of fines. After that last
9 round of fines, the establishment improved.
10 I can say when it changed names from Mood
11 Lounge to Vita is when things began to
12 improve.

13 CHAIRPERSON MILLER: Okay.

14 MR. DANILOVICS: So I'm assuming
15 that's around 2012.

16 CHAIRPERSON MILLER: Okay.

17 MR. DANILOVICS: Somewhere in that
18 year.

19 CHAIRPERSON MILLER: Are you aware
20 that the new tenants that have moved in, that
21 they have had any problems with noise from --

22 MR. DANILOVICS: Yes, they have.

1 CHAIRPERSON MILLER: Okay.

2 MR. DANILOVICS: Including the
3 downstairs, which is why they were all part of
4 the Smith Group of five.

5 CHAIRPERSON MILLER: The group?
6 Okay. And that being the one that shares the
7 wall with Penthouse Nine?

8 MR. DANILOVICS: Correct, the
9 renters below me share the second floor and
10 then the folks who bought the unit in the
11 front also share the second floor.

12 CHAIRPERSON MILLER: And they both
13 have had issues?

14 MR. DANILOVICS: Yes.

15 CHAIRPERSON MILLER: Okay. And
16 finally, I just want to clarify, you and the
17 protestant group, it's my understanding you
18 are not against the renewal of the license,
19 but you just want it renewed with the
20 conditions that are reflected in the
21 settlement agreement that are new? Most
22 important being the one hour reduction?

1 MR. DANILOVICS: Correct. We are
2 not seeking revocation of the license.

3 CHAIRPERSON MILLER: Okay. Thank
4 you. All right. I think that's -- oh, no,
5 Mr. Hibey?

6 MR. HIBEY: Yes, I just wanted to
7 make sure it's clear.

8 CROSS-EXAMINATION

9 MR. HIBEY: Mr. Froehlich didn't
10 move out of the residence exclusively because
11 of sound. He moved out for a number of
12 reasons, right?

13 MR. DANILOVICS: He told me
14 because of the sound.

15 MR. HIBEY: That was the only
16 reason why he moved out? He told you that?

17 MR. DANILOVICS: He didn't say
18 that was the only reason. His wife was
19 probably one of the more vocal residents in
20 the building throughout the years. His
21 fiancée at the time.

22 MR. HIBEY: Where did they move?

1 MR. DANILOVICS: I don't know. I
2 think Brookland or LeDroit, but don't quote me
3 to that. Don't -- please don't hold me to
4 that one.

5 MR. HIBEY: Okay. So he never
6 told you that that was the only reason why he
7 moved?

8 MR. DANILOVICS: He said it was a
9 reason, but he did not use the words "this is
10 the only reason I'm selling."

11 MR. HIBEY: All right. Thank you.

12 CHAIRPERSON MILLER: Okay. Did
13 you have any other questions based on Board
14 questions?

15 MR. SMITH: No, I don't.

16 CHAIRPERSON MILLER: Okay.

17 MR. DANILOVICS: Great. Thank
18 you.

19 CHAIRPERSON MILLER: Thank you
20 very much. Okay. Okay. You have offered
21 into evidence these and I have accepted them,
22 admitted them. Okay. I think that then

1 completes your case. We are ready for
2 closing?

3 MR. HIBEY: I just want two
4 minutes on rebuttal?

5 CHAIRPERSON MILLER: Oh, you want
6 rebuttal? Okay. You still have time. Okay.

7 MR. HIBEY: Can you go back up
8 there to the front?

9 MS. BEYENE: Okay.

10 Whereupon,

11 ABEBA BEYENE
12 was recalled as a witness by Counsel for the
13 Licensee, and having been previously duly
14 sworn, resumed the witness stand, was examined
15 and testified as follows:

16 REBUTTAL

17 MR. HIBEY: Can you, please, state
18 your name again?

19 MS. BEYENE: Abeba Beyene.

20 MR. HIBEY: And I just want to be
21 brief. I want to go back to there was some
22 testimony from Mr. Smith about text messages

1 on April 20th. He was unable to pull up the
2 time stamps on those texts. I believe he read
3 them in their entirety, but could you, please,
4 tell the Board the times of each of the texts?

5 MS. BEYENE: Okay. Mr. Martin
6 Smith send me a text message 12:16 a.m. and I
7 respond to the text 12:21 a.m. by saying "Mr.
8 Martin, I am at the back of the building.
9 Also the ABRA, MPD, DCRA, which is the Sound
10 Force, are outside. The volume is exactly how
11 it is supposed to be, sir."

12 MR. HIBEY: Okay. There is no
13 question and you didn't need to read that, but
14 you reread the same text that he read, right?

15 MS. BEYENE: Yes.

16 MR. HIBEY: Okay. And the
17 timestamp of his first one was 12:16. Your
18 reply was 12:21 a.m.

19 MS. BEYENE: Yes.

20 MR. HIBEY: And then he replied
21 again and what time was his reply?

22 MS. BEYENE: 12:23.

1 MR. HIBEY: 12:23 a.m.?

2 MS. BEYENE: Yes.

3 MR. HIBEY: Two minutes later?

4 MS. BEYENE: Yes.

5 MR. HIBEY: Okay. And you were in
6 the back that night behind the business,
7 right?

8 MS. BEYENE: Yes. I'm always at--
9 towards the night, I always go at the back.
10 I always circle the buildings. Mr. Martin is
11 aware of that. He sees me all the time.

12 MR. HIBEY: Okay. What are you
13 doing back there?

14 MS. BEYENE: I always go back
15 there because for simply mostly for Mr.
16 Martin's complaint, because there is no sound
17 ever since the speaker been disconnected and
18 as well as the emergency door being sealed.
19 No sound comes out of the building from the
20 back.

21 Mr. Martin lives 110 feet away
22 from my establishment towards the back. In

1 fact, there is one commercial building. There
2 is also it looks like abandoned building. And
3 there is empty land between my establishment
4 and between Mr. Martin's establishment.

5 Several times -- I have cameras.
6 I have 16 cameras in the establishment. I
7 have no blind spot outside/inside. Several
8 times in the middle of the night when the
9 business is going on, Mr. Martin will do this
10 towards the door, the back door and camera
11 record him.

12 He can't hear nothing. And I've
13 been to his door where he lives at. I've been
14 to my establishment directly from the door.
15 Several times, countless of times almost every
16 weekend, I do that and I record that.

17 MR. HIBEY: Okay.

18 MS. BEYENE: Because nothing comes
19 out of that building from the back side.

20 However, Mr. George because we
21 share walls, I'm never been to his apartment,
22 his condo. I cannot tell you what he hear or

1 what he cannot hear.

2 On the -- in addition to that,
3 Sound Force is provided by, I believe, ABRA,
4 MPD, and DCRA, they come and to sound test
5 from the back of the building, from outside.
6 They don't come in. They don't tell you when
7 they coming. There was never one single
8 violation from I don't know how many times
9 they came in, a few times. I saw them
10 personally on camera on being outside so many
11 times.

12 There was never a violation.
13 Particularly that night, right before Mr.
14 Martin's text came through, the Sound Force,
15 I can see them in front of my building. They
16 go from the front to the back most of the
17 time. Sometimes you see them, sometimes
18 security tells me, sometimes I don't see them.

19 I saw them in front of my building
20 doing whatever meter thing they do. There was
21 no violation. When they come -- when there is
22 violation, they came in. It never happened to

1 me, but I assume they came in and tell you you
2 violated this and that.

3 However, that particular night
4 right before this text message came through,
5 I see the ABRA, MPD, DCRA doing a sound test
6 out front, from the front part of the
7 building. I came out the back, because
8 normally -- I made a mistake once and I opened
9 the door to go out the back and I got a
10 violation, that's the pending case.

11 But I circled the -- I go outside
12 from the front and go all the way in the back
13 and check because they are checking the front.
14 I'm checking at the back. 99.9 percent of the
15 time nothing comes out of the back alley,
16 nothing. It's the same thing, I'm there. I'm
17 always there. I open seven days a week. I
18 open and close. There is nobody who open and
19 close. I'm always there.

20 And when I get the text message, I
21 replied. Maybe it was in a couple of minutes,
22 as soon as I see it. I said Mr. Martin, the

1 Sound Force are outside. I'm also at the back
2 of the building. Nothing comes out of -- no
3 sound comes out of the building.

4 MR. HIBEY: Okay. Mimi --

5 MS. BEYENE: So that's how I
6 responded.

7 MR. HIBEY: -- thank you. And
8 just one other issue that I want to cover in
9 rebuttal. Did Mr. Smith ever tell you to try
10 out earlier closing times? Did he ever
11 suggest that to you?

12 MS. BEYENE: Never. When we did
13 mediation with -- I forgot the name of the
14 lady. When we did a mediation, present this
15 try to close early and see, that's what we are
16 going to ask the Board to do. I told him
17 specifically me closing an hour early is not
18 going to work for the business.

19 In fact, I explained to Mr. Smith
20 what kind of cliental I have on Friday and
21 Saturday. I invite Mr. Smith in front of the
22 mediator to come in as a customer, you know,

1 as my guest and see -- come inside and see
2 what goes on.

3 MR. HIBEY: Okay.

4 MS. BEYENE: And he never showed
5 up.

6 MR. HIBEY: Okay. Thank you,
7 Mimi. That's it.

8 CHAIRPERSON MILLER: Okay. Cross?

9 MR. DANILOVICS: No cross.

10 CHAIRPERSON MILLER: Board
11 questions? I do. Okay. Just based on what
12 you just said, it's Friday and Saturday night
13 that you have a different cliental that the
14 hours are most important?

15 MS. BEYENE: Friday I have gay men
16 only. I don't know if that's appropriate word
17 to say, but it's only boys.

18 CHAIRPERSON MILLER: Okay. I
19 mean, you --

20 MS. BEYENE: Boys, gays. I'm
21 sorry, I'm not -- I can't say it the right
22 way.

1 CHAIRPERSON MILLER: I just wanted
2 to just confirm that you have targeted those
3 two days as being --

4 MS. BEYENE: Yes, most of my --

5 CHAIRPERSON MILLER: -- the most
6 important.

7 MS. BEYENE: -- employees are, you
8 know.

9 CHAIRPERSON MILLER: Fridays and
10 Saturdays, those hours are most important?

11 MS. BEYENE: Yes.

12 CHAIRPERSON MILLER: Okay. And I
13 also know this was not addressed specifically,
14 I guess in rebuttal, but I just want to
15 clarify it because we are going to be, we as
16 a Board, zeroing in on what is the relief that
17 you are seeking and so, obviously, you are
18 seeking renewal of your license. We know
19 that.

20 Okay. So then it gets down to,
21 I'm a little bit confused about the
22 soundproofing that has been talked about. Is

1 that something you plan to do or is that
2 something, you know, others want us to impose
3 a condition on?

4 MS. BEYENE: When -- oh, I'm
5 sorry.

6 CHAIRPERSON MILLER: Go ahead.
7 No, go ahead.

8 MS. BEYENE: In 2012 when there
9 were several noise issue, I agreed to do
10 soundproofing. In addition to putting a
11 limiter, which a limiter works when the music
12 is -- when a DJ trying to pass the limit of
13 the sound system, which is adjusted with a
14 limiter, the sound system cut off. Nothing
15 works. The music stop. so DJs are not -- DJs
16 know they cannot go more than the limiter.

17 Beside putting the limiter, beside
18 disconnecting from 34 speaker --

19 CHAIRPERSON MILLER: Okay. We
20 know that. You testified to that before.

21 MS. BEYENE: Yes, ma'am.

22 CHAIRPERSON MILLER: My question

1 is just to the soundproofing. Are you
2 planning on doing soundproofing?

3 MS. BEYENE: I agreed to do it.

4 CHAIRPERSON MILLER: You agreed to
5 do it?

6 MS. BEYENE: 100 percent.

7 CHAIRPERSON MILLER: Okay.

8 MS. BEYENE: Starting immediately.
9 I have two companies I got estimate from. And
10 they did several walk-through with myself and
11 neighbors as well --

12 CHAIRPERSON MILLER: Okay.

13 MS. BEYENE: -- in which part of
14 the establishment should be soundproofed.

15 CHAIRPERSON MILLER: And --

16 MS. BEYENE: I agreed to do it
17 immediately.

18 CHAIRPERSON MILLER: And that is
19 the second floor walls and ceiling?

20 MS. BEYENE: The second floor.
21 Yes.

22 CHAIRPERSON MILLER: Okay. Thank

1 you. Okay. All right.

2 MEMBER JONES: Madam Chair?

3 CHAIRPERSON MILLER: Oh, yes, Mr.
4 Jones?

5 MEMBER JONES: Thank you, Madam
6 Chair. Just to confirm, just on this rebuttal
7 testimony --

8 MS. BEYENE: Yes.

9 MEMBER JONES: -- that you are
10 providing us. You were not lying when you
11 sent the text message to Mr. Smith?

12 MS. BEYENE: Yes.

13 MEMBER JONES: Yes. You weren't
14 lying?

15 MS. BEYENE: Absolutely not.

16 MEMBER JONES: Okay. And this is
17 a routine thing that you do because you are
18 concerned -- when I say this, the routine
19 thing that you do is walk around your -- the
20 perimeter of your building to check on the
21 level of noise emanating or coming out of your
22 establishment. This is a routine thing that

1 you do?

2 MS. BEYENE: Absolutely.

3 MEMBER JONES: Okay.

4 MS. BEYENE: The neighbors are
5 aware of that. Besides the sound, besides the
6 noise only, there -- I'm not supposed to have
7 any part by this area, by my side of the
8 establishment. So I make sure if anybody park
9 there, I also notify for those car to be
10 towed, because I have put a sign there make
11 sure nobody park. This is --

12 MEMBER JONES: Understood.

13 MS. BEYENE: -- you know, you
14 cannot be --

15 MEMBER JONES: But I just want to
16 make sure I --

17 MS. BEYENE: For several reasons.

18 MEMBER JONES: -- understand --

19 MS. BEYENE: Yes.

20 MEMBER JONES: -- that it is part
21 of your routine --

22 MS. BEYENE: Every day.

1 MEMBER JONES: -- to walk around
2 the establishment.

3 MS. BEYENE: Yes.

4 MEMBER JONES: And so this is on
5 the outside of the establishment?

6 MS. BEYENE: All the time.

7 MEMBER JONES: So you are in the
8 alley and you can hear whether you can hear or
9 not hear music coming from your establishment.

10 MS. BEYENE: 100 percent.

11 MEMBER JONES: You do this
12 personally, correct?

13 MS. BEYENE: All the time.

14 MEMBER JONES: Okay. Cool. Now,
15 let's talk about the soundproofing really
16 quickly. So you have two quotes and I'm
17 really not trying to get into the veracity of
18 the quotes and what exactly they are for.

19 I'm trying to understand what
20 drove you to want to get soundproofing done
21 now.

22 MS. BEYENE: I --

1 MEMBER JONES: You are saying, you
2 are testifying to the fact that you are
3 agreeing to do it immediately.

4 MS. BEYENE: Yes.

5 MEMBER JONES: Why now? Why
6 wasn't this done a year ago? I'm just trying
7 to understand what your rationale is.

8 MS. BEYENE: I mean there are
9 several reason why it didn't take place a year
10 ago.

11 MEMBER JONES: So just give me the
12 top two.

13 MS. BEYENE: Okay. Number one,
14 financial reason.

15 MEMBER JONES: Okay. So you
16 didn't have enough money, so you saved up
17 money to address it?

18 MS. BEYENE: Yes.

19 MEMBER JONES: Okay. That's Item
20 1. What's Item 2?

21 MS. BEYENE: Because both
22 companies, you have to have -- you have to put

1 almost half of the deposit in advance for them
2 to start working.

3 MEMBER JONES: Understood. So
4 that financial reason is one reason. What's
5 the -- is there another reason?

6 MS. BEYENE: Another reason is not
7 to go through this process.

8 MEMBER JONES: Okay. So the other
9 reason is to try to address the concerns of
10 the community, so you didn't have to go
11 through this protest process?

12 MS. BEYENE: For the community,
13 yes, yes.

14 MEMBER JONES: Okay.

15 MS. BEYENE: Yes.

16 MEMBER JONES: So in getting the
17 definition of your requirement and presenting
18 it to the contracting company --

19 MS. BEYENE: Yes.

20 MEMBER JONES: -- what did you
21 tell them you were trying to achieve? Did you
22 tell them you were trying to eliminate all

1 noise? What did you tell them?

2 MS. BEYENE: Eliminate all noise.

3 MEMBER JONES: Coming out of the
4 establishment?

5 MS. BEYENE: Coming out of the
6 establishment, because, like I said before,
7 the neighbors, some of the neighbors were
8 present with the -- to do the walk-through.

9 MEMBER JONES: Yes.

10 MS. BEYENE: And so two eliminate
11 the sound completely.

12 Now regarding to the back sound,
13 because the because the back sound which is
14 the alley where is Mr. Martin Smith's house is
15 110 feet away.

16 MEMBER JONES: Yes, understood.

17 MS. BEYENE: Mostly for the people
18 who live next door because upstairs share a
19 wall --

20 MEMBER JONES: Understood.

21 MS. BEYENE: -- with residential,
22 with condominium as Mr. George testify.

1 MEMBER JONES: Okay. And not to
2 cut you off, but I just want to make sure. So
3 that's what you specified in your, I'll call
4 it your, RFP, your request of these
5 individuals that provided you this quote. Did
6 you place any financial cap on their response?
7 In other words, did you tell them give me the
8 best solution that I can get for \$20,000? Did
9 you put any cap on --

10 MS. BEYENE: No.

11 MEMBER JONES: No. Okay. So you
12 said regardless of price, find me the best
13 solution that is going to mitigate this
14 problem?

15 MS. BEYENE: Yes, the best --

16 MEMBER JONES: And you defined
17 what the problem was.

18 MS. BEYENE: -- solution, yes.

19 MEMBER JONES: Okay. And just to
20 make sure I'm confirming this --

21 MS. BEYENE: Yes, sir.

22 MEMBER JONES: -- you are stating

1 here today under oath that you are going to
2 move forward with the soundproofing that you
3 presented to us verbally in terms of the two
4 quotes, either the \$14,000 one or the \$17,500,
5 one of those solutions you are going to move
6 forward with. Is that a fair statement?

7 MS. BEYENE: Absolutely, yes.

8 MEMBER JONES: Okay. Thank you.
9 Thank you, Madam Chair.

10 CHAIRPERSON MILLER: Okay. Let me
11 just ask you this. When do you think you are
12 going to go forward with this? When do you
13 think you are going to do it?

14 MS. BEYENE: Immediately.

15 CHAIRPERSON MILLER: Immediately?
16 This summer?

17 MS. BEYENE: Immediately. I can
18 start work -- both companies are from the
19 Washington, D.C. area. Especially one of the
20 company done several lounges or nightclubs in
21 the city. So I already chose which company to
22 go forward with. I already told them to wait

1 for me until I present my case to the Board.
2 And as soon as this -- you know, we are
3 finished, I just put the deposit to them and
4 they start working.

5 It's not even a matter of it takes
6 seven days and one of the --

7 CHAIRPERSON MILLER: I see. Are
8 you saying you want to make sure you get
9 renewed before you do this? I mean, is that
10 what you --

11 MS. BEYENE: No.

12 CHAIRPERSON MILLER: No?

13 MS. BEYENE: No.

14 MR. HIBEY: Yes.

15 MS. BEYENE: At the beginning,
16 when I begin --

17 MR. HIBEY: Mimi, you are not
18 going to do it if you don't --

19 CHAIRPERSON MILLER: All right.

20 MS. BEYENE: No, no, no.

21 MR. HIBEY: I think she is
22 misunderstanding, confused.

1 MS. BEYENE: Yes, sometimes.

2 CHAIRPERSON MILLER: All right.

3 MS. BEYENE: I get that.

4 CHAIRPERSON MILLER: Okay.

5 MS. BEYENE: What -- if I don't
6 get renewal, I don't own the building.

7 CHAIRPERSON MILLER: Okay.

8 MS. BEYENE: I'm only the owner of
9 the business.

10 CHAIRPERSON MILLER: Okay.

11 MS. BEYENE: So spending that kind
12 of money --

13 CHAIRPERSON MILLER: Okay. We got
14 it.

15 MS. BEYENE: Sorry.

16 CHAIRPERSON MILLER: Okay.

17 MR. HIBEY: Can I help clarify
18 some of that?

19 CHAIRPERSON MILLER: All right.
20 If you feel you need to for the record.

21 MR. HIBEY: I just -- Mimi, when
22 you say you are going to do this immediately--

1 MS. BEYENE: Yes.

2 MR. HIBEY: Do you mean
3 immediately after you walk out the door today
4 or do you mean immediately upon a decision
5 from the Board --

6 MS. BEYENE: Yes.

7 MR. HIBEY: -- granting you --

8 MS. BEYENE: Of course.

9 MR. HIBEY: -- your full hours.

10 MS. BEYENE: I mentioned that if
11 I'm not mistaken.

12 MR. HIBEY: Okay.

13 CHAIRPERSON MILLER: No, that's
14 not what she said.

15 MR. HIBEY: Well --

16 CHAIRPERSON MILLER: You are
17 putting words in her mouth about that.

18 MR. HIBEY: Well, I --

19 MEMBER JONES: He is asking a
20 question.

21 MR. HIBEY: Correct, yes. I need
22 -- I mean, Mimi, you need to clarify what you

1 mean when you say you are going to do this
2 immediately.

3 MS. BEYENE: Okay. Mr. Michael,
4 English is my second language and I honestly,
5 honest truth, some things I don't explain
6 correctly. And if you want me to explain what
7 I meant, I will do so, Madam Chair.

8 Like I mention, I don't own the
9 building. I own the business. If my hours
10 are cut, like I mentioned to you earlier
11 today, it would cripple my business. There's
12 not going to be any business and I'm aware of
13 that. So I'm not going to go forward doing
14 the soundproofing.

15 However, if my license is renewed,
16 I'm 100 percent ready to go forward with the
17 soundproofing.

18 CHAIRPERSON MILLER: Okay. Any
19 other questions? Okay. All right. Thank
20 you.

21 MS. BEYENE: Thank you.

22 CHAIRPERSON MILLER: All right.

1 Now, we are ready for closing. Applicant goes
2 first, five minutes each. If you want to do
3 a closing.

4 MR. HIBEY: Sure.

5 CHAIRPERSON MILLER: Okay.

6 MR. HIBEY: So I think we are back
7 where we started. I think that the record
8 from the investigative history with this
9 license, I think that the record from ABRA
10 Investigators, the record from the ABRA
11 Investigative Report and from his testimony
12 today about the Noise Task Force, I think all
13 of that shows that she has improved, that she
14 has been much better in the last 18 months or
15 so. And there have not been noise problems.

16 I think that is the story. I
17 think that was clear from Kofi in his report
18 and in his testimony, which added additional
19 visits beyond just the ones he had cited in
20 his report. And said that there were no
21 violations in his 10 visits then and his three
22 before that.

1 Mimi has taken steps. She has
2 done a lot to fix sound problems and the sound
3 is not a problem for Mr. Smith now. He
4 testified that it was still. And we don't
5 think it's credible. His testimony was not
6 credible in a number of different ways. Most
7 clearly was when he testified about the text
8 messages and characterized them in one way,
9 read them and it was clear that his
10 characterization was false.

11 And then furthermore, his
12 testimony was that the texts were spread out
13 over 20, 30, 40 minutes. They were all within
14 10 minutes of each other. The first one was
15 at 12:16. The last one was at 12:23. Her
16 response was at 12:21. I mean, it was all
17 right then and there. And she responded. She
18 took action. She made sure there was no
19 sound.

20 There was Investigators there that
21 night and they late came that night and there
22 was no violation.

1 So, you know, we think that is the
2 story. There aren't sound problems going
3 outside into the back alley. We don't know
4 what is going on going into the building right
5 next door and we are willing to address that
6 with any soundproofing measures that the Board
7 conditions under the renewal of the license.

8 We will do it. We want to do it,
9 but we cannot give up this hour. So to us
10 there is like two different things going on
11 here. And one is noise. And we fully admit
12 and agree there was noise problems in the
13 past. There are not significant noise
14 problems any more, but any that remain, we
15 want to fix and address.

16 Okay. So that's the one issue.
17 Then there is this whole other issue of what
18 the neighborhood wants about an hour
19 reduction. That's what they are trying to go
20 about here with this new template that they
21 are putting onto new businesses and they are
22 trying to put onto this business.

1 This settlement agreement they
2 have proposed addresses zero changes in noise.
3 It won't do anything to change the noise
4 system. It doesn't address it at all. All it
5 does is it reduces an hour. There is a few
6 other minor changes. We agree to all of them.
7 But we are not going to give up an hour just
8 because they want to establish a precedent
9 throughout the neighborhood that everyone is
10 going to be closing at 1:00 and 2:00.

11 And it is not a precedent. They
12 are trying to say that they have already
13 established this precedent. But if you look
14 at their own exhibit, no business that has a
15 tavern license has given up an hour in
16 renewing their license. Zero.

17 Bar 7 still has until 3:00 a.m.
18 Lost and Found is a brand new business. They
19 have until 1:30 and 2:30. They have not given
20 up an hour. A&D they are at 1:00 and 2:00.
21 That's what they always were since they
22 opened. No one has agreed to reduce their

1 hours by one hour, just because they have got
2 a new template that they want to force onto
3 the neighborhood.

4 Furthermore, if you go broader
5 and, sure, my exhibit is broader, but this
6 Licensee Exhibit 28 lists all of the taverns
7 in the ZIP Code and there are seven that do
8 not go until 3:00 a.m. out of 50 plus.

9 And of those seven that do not go
10 until 3:00 a.m., three of them are temporary
11 businesses, that's Brookland Flea DC, that's
12 Events Concepts and Hill Country Summer
13 Barbecue at the National Building Museum.

14 They are temporary. They are not
15 there all the time. They are not real tavern
16 businesses like this one.

17 Two more are Group Hubs. That's
18 Rustic Tavern and Right Proper Brewing
19 Company, not at all competitors of our
20 business. One more, it lists its hours until
21 2:00 a.m., but it actually closes at 7:00 and
22 8:00 p.m., it's the Chinatown Coffee Company.

1 They are mostly a coffee place and they close
2 at 7:00 and 8:00 p.m.

3 The last one is A&D. And they do
4 close at 1:00 and 2:00, but they have always
5 done that. They gave up nothing. So of the
6 only -- the seven on this entire list, none of
7 them are in the similar situation here. And
8 all of the others are until 2:00 and 3:00 a.m.

9 So if we force her to close an
10 hour early, she does become an anomaly. She
11 stands out. She is an outlier. She is not
12 part of some precedent that already exists.
13 No precedent exists and they want to establish
14 a precedent of 1:00 and 2:00 a.m.

15 Their settlement agreement is only
16 about the hour. And this is all about taking
17 an hour away. It's not about addressing noise
18 issues, which we want to address, so that we
19 are good neighbors and are appropriate.

20 We think we are already there and
21 we are willing to go even farther. We are
22 willing to do anything as long as we get to

1 keep our hour and that includes the
2 soundproofing, that includes more MPD if they
3 think we need it. We will do anything, but we
4 need our full hours.

5 But just going back to the noise,
6 even talking about the patrons leaving, there
7 have been no complaints about that. I mean,
8 this is the first we are hearing about it is
9 that there is problems with patrons leaving.

10 It has always been about the sound
11 system and what can we do there. They have
12 been over there many times. We have done the
13 limiter. We have eliminated speakers. But
14 all those steps that we have taken have made
15 a big change, a large improvement that George
16 admitted to. There has been an improvement.

17 Martin maybe not so much, but and
18 then going -- just the last point.

19 If we do reduce an hour, it
20 cripples her business. And we have no clue
21 that that is going to do any good. It's
22 speculation. Even Martin said I don't know if

1 it is 2:00 versus 3:00. He doesn't know. You
2 don't know. We don't know.

3 So why are we taking that last
4 final Draconian step of eliminating a full
5 hour before we explore all other possibilities
6 to keep this business operational for its full
7 hours? And we will do anything to keep that
8 last hour. Thank you.

9 CHAIRPERSON MILLER: Okay. Thank
10 you. Are you ready?

11 MR. DANILOVICS: Yes.

12 CHAIRPERSON MILLER: Okay.

13 MR. DANILOVICS: Good evening,
14 Board Members. At the beginning of this
15 process, we were advised to focus on the
16 appropriateness of the ABRA license within the
17 neighborhood.

18 Ms. Beyene has entered into
19 evidence that her competition are
20 establishments within the 20001 ZIP Code.
21 Those establishments extend into U Street as
22 well as down to Massachusetts Avenue within

1 the Central Business District.

2 I would contend that those areas
3 are dramatically different than the area
4 around Naylor Court and Blagden Alley on 9th
5 Street bound by O Street and N Street.

6 Ms. Beyene has presented that her
7 establishment could reduce sound by
8 soundproofing improvements and could enhance
9 her audio system to ensure the bass from the
10 establishment does not disturb her adjoining
11 residents' peaceful use of their space.

12 Ms. Beyene has had the
13 soundproofing proposal since 2012 and has not
14 acted on those proposals.

15 Further, we believe that the
16 soundproofing proposal by only addressing one
17 face of her establishment will not be
18 effective in eliminating and reducing the
19 sound, particularly the bass that exits her
20 establishment.

21 The location as is would not pass
22 an ABRA new request to operate a nightclub

1 without significant improvements prior to the
2 establishment being allowed to open. The
3 neighbors and ANC-2F desired to have a mixed-
4 use neighborhood. This mix includes
5 residents, commercial and nighttime
6 establishments.

7 New condos, apartments,
8 restaurants and taverns are quickly filling
9 out 9th Street and the adjoining side streets.
10 A nightclub releasing music and DJs into the
11 neighborhood is not what anyone wants or
12 deserves to live next to.

13 It is impractical to have over 200
14 people leave an establishment at 3:00 at last
15 call. This volume of people creates a
16 nuisance in the neighborhood and problems as
17 patrons wait for the valet service.

18 In 2011 to 2012, the neighborhood
19 dealt with significant problems with Mood
20 Lounge. As a result of those issues, ANC-2F
21 began work on a settlement agreement template
22 that has taverns closing at 11:00 a.m. during

1 the week and 2:00 a.m. during weekends. Last
2 call is 30 minutes prior to close.

3 This 30 minute buffer has proven
4 effective in Barracks Row and has thus far
5 worked for those licensees that have that
6 condition in our neighborhood.

7 Two new ABRA licensees have just
8 agreed to this term. A current ABRA licensee
9 has successful renewal of their license, which
10 includes similar terms that we are asking of
11 Mood -- or of Vita Lounge.

12 The ANC originally sought complete
13 revocation of the license. Some members of
14 Smith Group originally sought even shorter
15 hours of the -- and the revocation of the
16 entertainment endorsement.

17 We are presented the Board with a
18 compromise of many of our neighbors. We are
19 asking for an hour of reduction to restore
20 some peace to those in the neighborhood and 30
21 minute prior to close to allow patrons to exit
22 in a gradual manner.

1 The Smith Group requests that the
2 Board approve the settlement agreement as
3 presented in Protestant Exhibit 1. The Smith
4 Group further requests that the Board require
5 Ms. Beyene to complete required soundproofing
6 to all walls of her establishment as a
7 condition of approving the settlement
8 agreement.

9 If Ms. Beyene fails to complete
10 the necessary soundproofing, that the Board
11 enable penalties up and to including
12 suspension of the license until that work has
13 been completed. Thank you.

14 CHAIRPERSON MILLER: Okay. Is
15 there any rebuttal on closing?

16 MR. HIBEY: No.

17 CHAIRPERSON MILLER: Okay. Good.
18 All right. Then I'm going to close the record
19 in this case and finally ask the parties if
20 they want to file proposed findings of fact
21 and conclusions of law or waive your right to
22 do so? It is definitely optional. It is once

1 in a while invoked.

2 MR. HIBEY: We do not want to
3 waive our right.

4 CHAIRPERSON MILLER: Huh, what?

5 MR. HIBEY: We do not want to
6 waive our right to that.

7 CHAIRPERSON MILLER: Okay. You
8 don't want to waive your right. So let me
9 tell you, then what happens is the transcript
10 will be available in two to three weeks, I
11 believe, and it would be emailed out to you
12 all.

13 And then you would have 30 days to
14 submit it when it is emailed to you. If you
15 determine you are not going to file, let us
16 know, because we are going to be waiting to
17 deliberate until we receive those. But if you
18 know it's not -- they are not coming, you
19 might talk to each other and find out whether
20 each of you are filing, because that might be
21 a factor, so then we would get to it sooner
22 rather than later. Okay?

1 MR. HIBEY: Okay.

2 CHAIRPERSON MILLER: All right.

3 We are going to take a vote on deliberating
4 the case in closed session, once we get to
5 that point. Okay. And then that will be it.

6 As Chairperson of the Alcoholic
7 Beverage Control Board for the District of
8 Columbia and in accordance with Section 405 of
9 the Open Meetings Amendment Act of 2010, I
10 move that the ABC Board hold a closed meeting
11 for the purpose of seeking legal advice from
12 our counsel on Case No. 13-PRO-00154, Vita
13 Restaurant and Lounge/Penthouse Nine, per
14 Section 405(b)(4) of the Open Meetings
15 Amendment Act of 2010, and deliberating upon
16 this case for the reasons cited in Section
17 405(b)(13) of the Open Meetings Amendment Act
18 of 2010.

19 Is there a second?

20 MEMBER SHORT: Second.

21 CHAIRPERSON MILLER: Mr. Short has
22 seconded the motion. I'll now take a roll

1 call vote on the motion now that it has been
2 seconded.

3 Mr. Brooks?

4 MEMBER BROOKS: I agree.

5 CHAIRPERSON MILLER: Ms. Miller
6 agrees.

7 Mr. Silverstein?

8 MEMBER SILVERSTEIN: I agree.

9 CHAIRPERSON MILLER: Mr. Short?

10 MEMBER SHORT: I agree.

11 CHAIRPERSON MILLER: Mr. Jones?

12 MEMBER JONES: I agree.

13 CHAIRPERSON MILLER: The motion
14 passes then by a vote of 5-0-0.

15 I hereby give notice that the ABC
16 Board will hold a closed meeting in the ABC
17 Board conference room pursuant to the Open
18 Meetings Amendment Act of 2010 upon receipt of
19 the Proposed Findings of Fact and Conclusions
20 of Law or indication that you will not be
21 submitting them.

22 And at that point then, we will

1 issue a written decision on this case within
2 90 days of that date. Okay.

3 Any questions? All right.

4 MR. HIBEY: I wanted to be sure, I
5 passed up a number of exhibits and I don't
6 know if you have a full set that is actually
7 labeled. Do you have a full set of exhibits?
8 Do you want me -- I have some stickers here I
9 can stick on them.

10 CHAIRPERSON MILLER: Let me just
11 check mine. Mine isn't the official one per
12 se, but I marked them all, the 26, the 22, the
13 24.

14 MR. HIBEY: I have stickers with
15 the labels. I can put them on right now. It
16 will take a minute.

17 CHAIRPERSON MILLER: You don't
18 have a set there or you do?

19 MR. HIBEY: I do have one set that
20 is totally labeled.

21 CHAIRPERSON MILLER: Okay.

22 MR. HIBEY: And I guess I could

1 swap my set with your, if you would like?

2 There is a number of pictures.

3 CHAIRPERSON MILLER: Okay.

4 Licensee 28? This one has a sticker, so there
5 are only one, two, three that don't have a
6 sticker.

7 MR. HIBEY: I'll give you
8 stickers.

9 CHAIRPERSON MILLER: What?

10 MR. HIBEY: I can give you
11 stickers.

12 CHAIRPERSON MILLER: Okay. 22, 26
13 and 24?

14 MR. HIBEY: Yes.

15 CHAIRPERSON MILLER: That's it,
16 right?

17 MR. HIBEY: I mean, I'm just
18 telling you I can give you stickers.

19 CHAIRPERSON MILLER: Okay. I
20 don't -- you know, our General Counsel is not
21 there. If it makes you feel more comfortable,
22 fine. Otherwise I do have them marked in pen.

1 MR. HIBEY: Okay.

2 CHAIRPERSON MILLER: I mean, so I
3 don't think it is necessary. Okay. Unless
4 you feel more comfortable? You want it more
5 neat, you can give me three stickers.

6 MR. HIBEY: Yes, I'll just switch
7 out mine.

8 CHAIRPERSON MILLER: Okay.

9 MR. HIBEY: Thank you.

10 CHAIRPERSON MILLER: I made some
11 notations on it.

12 MR. HIBEY: Oh, then just keep it.

13 CHAIRPERSON MILLER: Okay. All
14 right. Then that concludes this case. This
15 hearing anyway. Thank you very much.

16 MR. DANILOVICS: Thank you.

17 MR. HIBEY: Thank you.

18 MR. SMITH: Thank you.

19 CHAIRPERSON MILLER: Okay.

20 (Whereupon, the Protest Hearing in
21 the above-entitled matter was concluded at
22 6:37 p.m.)

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